TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~368~~ 109

JOHN J. WALKER, JOHN J. WALKER, EXECUTOR OF MARIA WALKER, WILLIAM BARNEWALL, M. M. BARNEWALL, H. A. LOWE, C. C. LOWE, A. H. RICE, J. A. HOPKINS, W. L. HOPKINS, S. H. OLIVER, AND KATE E. OLIVER, APPELLANTS,

vs.

WILLIAM M. DERBY, S. H. KERFOOT, J. F. PIERSON, ALONZO RAWSON, SAMUEL WING, H. H. HONORE, B. PHILPOT, H. E. PICKETT, J. B. SHEPARD, AND H. S. MONROE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED NOVEMBER 23, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 308.

JOHN J. WALKER, JOHN J. WALKER, EXECUTOR OF MARIA WALKER, WILLIAM BARNEWALL, M. M. BARNEWALL, H. A. LOWE, C. C. LOWE, A. H. RICE, J. A. HOPKINS, W. L. HOPKINS, S. H. OLIVER, AND KATE E. OLIVER, APPELLANTS,

vs.

WILLIAM M. DERBY, S. H. KERFOOT, J. F. PIERSON, ALONZO RAWSON, SAMUEL WING, H. H. HONORE, B. PHILPOT, H. E. PICKETT, J. B. SHEPARD, AND H. S. MONROE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district, before the Hon. Henry W. Blodgett, district judge of the United States for said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, and of the Hon. Thomas Drummond, circuit judge of the United States for the seventh circuit, sole judge of said circuit court sitting in chancery, on Friday the fifth day of August, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth year.

WILLIAM H. BRADLEY, *Clerk.*

JOHN J. WALKER, JOHN J. WALKER, executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliet A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver

vs.

WILLIAM M. DERBY, SAMUEL H. KERFOOT, J. Ford Pierson, Alonzo Rawson, Samuel Wing, Henry H. Honore, Brian Philpot,
2 Henry E. Pickett, Joseph B. Shepard, and Henry S. Monroe.

8766. Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be remembered that, on the ninth day of April, in the year of our Lord one thousand eight hundred and sixty-nine, came John J. Walker, John J. Walker, executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliet A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, complainants, by Hill and Dale, their solicitors, and filed in the office of the clerk of the circuit court of the United States for said district, their bill of complaint against William M. Derby, defendant; and, also, at the same time, filed their bond for costs in said entitled cause; which said bond is in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

3 JOHN J. WALKER, JOHN J. WALKER, executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliet A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver

vs.

WILLIAM M. DERBY.

Circuit court. Term, A. D. 1869. In chancery.

I hereby enter myself as security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the complainants of any costs ordered or adjudged to be paid by complain-

ants, & hereby agree and stipulate that execution may issue against my property for any costs taxed against the said complainants.

Dated this ninth day of April, A. D. 1869.

EDWARD J. HILL.

(Endorsed:) Filed April 9th, A. D. 1869. W'm H. Bradley, clerk.

On the same day, to wit, the 9th day of April, A. D. 1869, a
4 writ of subpœna issued out of said clerk's office against said defendant in said entitled cause, which said writ, together with the notice for an injunction and also the *the* return of the marshal thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to William M. Derby, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of May next to answer the bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliet A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judg-
5 ment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this ninth day of April, in the year of our Lord one thousand hundred and sixty-nine, and of our independence the ninety-third.

[SEAL.] W'M H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendant is notified that unless he shall enter his appearance in the clerk's office of said court at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

W'M H. BRADLEY, *Clerk.*

Notice.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

JOHN J. WALKER, JOHN J. WALKER, EXECU-
tor, Maria Walker, William Barnewall,
6 Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, William L. Hopkins, Juliet A. Hopkins, Stark H. Oliver, & Kate E. Oliver, complainants,
vs.
WILLIAM M. DERBY.

In chancery. Term, A. D. 1869.

To William M. Derby, defendant, above named:

Take notice that the complainants will move this honorable court, on the twelfth day of April, 1869, at the going in of the court on that day, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within-named defendant William M. Derby, in accordance with the prayer of the bill herein.

Yours, &c.

HILL & DALE,
Comp'ts Solicitors.

Dated this ninth day of April, A. D. 1869.

Return.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that I have appointed, and, by these presents, do appoint Geo. B. Hutchinson my true and lawful deputy to execute the annexed writ, (John J. Walker et al. vs. William M.
7 Derby,) and to make true return thereon according to law.

J. R. JONES, [SEAL.]
United States Marshal of the Northern District of Illinois.

I have served the subpœna, hereto attached and the notice of motion for writ of injunction thereon endorsed, upon William M. Derby, therein named, by delivering a true copy thereof, to him personally, this 9th day of April, A. D. 1869.

J. R. JONES,
U. S. Marshal,
By GEO. B. HUTCHINSON,
Sp'l Deputy.

Geo. B. Hutchinson, being first duly sworn, deposes and says that he served the annexed writ, as stated in the foregoing return.

GEO. B. HUTCHINSON.

Sworn to and subscribed before me this 9th day of April, A. D. 1869.

P. A. HOYNE,
U. S. Com. Nor. Dist. Ill.

(Endorsed:) Filed April 10th, A. D, 1869. W'm H. Bradley, clerk.

On this day, to wit, the 12th day of April, A. D. 1869, came said defendant William M. Derby, by Monroe & McKinnon, his solici-
8 tors, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance of W. M. Derby.

U. S. court, N. D. Ill.

JOHN J. WALKER ET AL.
vs.
WILLIAM M. DERBY.

We hereby enter our appearance as solicitors for the above-named def't.

MONROE & McKINNON.

(Endorsed:) Filed April 12th, '69. W'm H. Bradley, cl'k.

On this day, to wit, the 12th day of April, A. D. 1869, the following exhibits were filed in said clerk's office, and are in the words and figures following, to wit:

9 *Deed from Walker, ex'r, to Derby.*

[Revenue stamp, $26 00.]

This indenture, made the sixteenth day of March, one thousand eight hundred and sixty-seven, between John J. Walker, as executor of the last will and testament, and as trustee of the estate of Arthur F. Hopkins, late of the city of Mobile, and State of Alabama, deceased, party of the first part, and William M. Derby, of the city of Chicago, county of Cook, and State of Illinois, of the second part, witnesseth: That the said party of the first part, by virtue of the power and authority to him given in and by said last will and testament, and for and in consideration of the sum of twenty-five thousand six hundred ($25,600 00) dollars, lawful money of the United States of America, to him in hand paid at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators forever released and discharged from the same, by these presents, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, his heirs and assigns forever, all the following described premises, to wit, an equal undivided half part of the first following-described tract of land, known as that part of the northeast quarter of section four (4,) township thirty-eight (38,) north of range fourteen (14,) east of third principal meridian, bounded and described as follows: commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods, thence west to the east line of the Chicago and Rock Island Railroad, thence north on the east line of said railroad seventy-four rods to the north line of said quarter section, thence east on said line to the place of beginning: also, (the whole of the following-described pieces or parcels of land, to wit, the east half of block numbered one (1,) and the east half of block numbered six (6,) and the whole of blocks numbered five (5) and four (4,) and lots numbered one (1,) two (2,) twenty-three, (23,) and twenty-four (24,) in block numbered twelve, (12,) all in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section numbered three (3,) in township and range aforesaid; these lands being now hereby conveyed subject to any rights and privileges now enjoyed by the Union Stock Yard and Transit Company, as touching said premises;

Together with all and singular the edifices, buildings, rights, members, privileges, advantages, hereditaments and appurtenances to the same belonging, or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also, all the estate, right, title, interest, claim and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, and which the said party of the
10 first part hath, by virtue of said last will and testament, of, in, and to the same, and every part and parcel thereof, with the appurtenances:

To have and to hold the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit, and behoof forever.

And the said party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant, promise and agree to and with the said party of the second part, his heirs and assigns, that the said party of the second part, his heirs and assigns, shall and lawfully may, from time to time, and at all times forever hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy all and singular the said hereditaments and premises hereby granted and conveyed, or intended to be, with their and every of their appurtenances, and receive and take the rents, issue, and profits thereof, to and for his and their own use and benefit, without any lawful let, writ, hindrance, molestation, interrogation, or denial whatsoever, of, from, or by him, the said party of the first part, his heirs or assigns, or of, from, or by any other person or persons whomsoever, lawfully claiming, or who shall or may lawfully claim hereafter by, from, or under him or either of them, or by, from or under either of their right, title, interest, or estate; and that free and clear, and freely and clearly discharged, acquitted, and exonerated, or otherwise well and sufficiently saved, defended, kept harmless, and indemnified by them, the said parties of the first part, their heirs and assigns, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, judgments, and all other charges and incumbrances whatsoever, had, made, committed, exacted or done by him, the said party of the first part, or by, through, or with his or either of his acts, deeds, means, consent, procurement, or privity.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN J. WALKER. [SEAL.]

Executor of the last will and testament of A. F. Hopkins, deceased.

STATE OF ILLINOIS, *Cook County:*

I, Samuel H. Kerfoot, justice of the peace in said county, in the State aforesaid, do certify that John J. Walker, as executor of the last will and testament of Arthur F. Hopkins, deceased, who is personally known to me as the same person whose name is subscribed to the above deed, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this eighteenth day of March, A. D. 1867.

SAMUEL H. KERFOOT,
Justice of Peace, &c.

No. 133826. Filed March 19, 1867.

STATE OF ILLINOIS, *County of Cook:*

I, Norman T. Gassette, clerk of the circuit court and ex-officio recorder in and for said county in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 19th day of March, A. D. 1867, and recorded in book No. 379 of deeds, on page 466.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at Chicago, this 12th day of April, A. D. 1869.

[SEAL.] NORMAN T. GASSETTE,
Clerk of the Circuit Court and
Ex-officio Recorder of Cook County.

[5-ct. stamp.]

(Endorsed:) Filed April 12th, 1869. W'm H. Bradley, cl'k.

11 *Agreement between Derby & Kerfoot & Co.*

[Rev. stamp, 5 cents.]

In consideration of three hundred and seventy-five dollars, to me paid by Samuel H. Kerfoot and J. F. Pearson, known as S. H. Kerfoot & Co., of the city of Chicago, I do hereby agree to sell and quitclaim to said Kerfoot & Co. at any time before the first day of Sept., A. D., 1867 —said Kerfoot & Co. agreeing to purchase—one-half of the property by me purchased of John J. Walker, the executor of Arthur F. Hopkins, deceased. It is agreed that *if* the said Kerfoot & Co. shall pay to me in cash four thousand and one hundred dollars, and the further sum of eight thousand and seven hundred dollars, payable in one, two, and three years, in equal payments, and bearing interest at six per cent. per annum, and secured by deed of trust. It is further agreed that if the said Kerfoot & Co. should fail to comply with the conditions of this agreement, or fail to make payment before the first day of Sept., 1867, then this agreement to be void, and the three hundred and seventy-five dollars so paid by said Kerfoot & Co. shall be forfeited to me, and retained by me as stipulated damages for the non-fulfillment of said Kerfoot & Co. part of this agreement.

Dated Chicago, March 19th, 1867.

12 W'M M. DERBY. [SEAL.]
S. H. KERFOOT. [SEAL.]
J. F. PIERSON. [SEAL.]

For value received I hereby transfer and assign to J. Ford Pierson all my right and title in and to the within document and the premises therein described, and authorize and request William M. Derby to convey the said premises to said Pierson.

Witness my hand and seal this 17 day of August, 1867.

SAM'L H. KERFOOT. [SEAL.]

Witness:
FRANCIS I. REID.

No. 145780. Filed Aug. 31, 1867, at 2.45 p. m.

STATE OF ILLINOIS, *County of Cook:*

I, Norman T. Gassette, clerk of the circuit court and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 31st day of Aug., A. D. 1867, and recorded in book No. 404 of deeds, on page 292.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 12th day of April, A. D. 1869.

[SEAL.] NORMAN T. GASSETTE,
Clerk of the Circuit Court and
Ex-officio Recorder of Cook County.

[5-cts. stamp.]

(Endorsed:) Filed April 12th, 1869. W'm. H. Bradley, cl'k.

13 *Quitclaim deed from Walker et al. to Derby.*

[Rev. stamp, 50-100.]

This indenture, made this sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, between Maria

Walker and John J. Walker, her husband; Mary M. Barnewall and William Barnewall, her husband; Kate E. Oliver and Stark H. Oliver, her husband; Cornelia C. Lowe and Henry A. Lowe, her husband; Augusta H. Rice, widow; William L. Hopkins, bachelor; the sole and only surviving heirs of Arthur F. Hopkins, deceased, and Juliet A. Hopkins, widow of Arthur F. Hopkins, deceased, all of Mobile, Alabama, parties of the first part, and William M. Derby, of Chicago, Illinois, party of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of five ($5 00) dollars in hand, paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed, and quitclaimed, and by these presents do remise, release, sell, convey, and quitclaim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim,
14 and demand which the said parties of the first part have in and to the following-described lots, pieces or parcels of land situate in the county of Cook, and State of Illinois, to wit: The east half of block one (1) and six, (6,) all of blocks four (4) and five, (5,) and lots one, (1,) two, (2,) twenty-three, (23,) and twenty-four, (24,) in block twelve, (12,) in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section three, (3,) township thirty-eight (38) north, range fourteen, (14,) east of the third principal meridian; and also the undivided half of that part of the northeast quarter of section four, (4,) township thirty-eight (38) north, range fourteen, (14,) east of the third principal meridian, described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods, thence west to the east line of the Chicago and Rock Island Railroad, thence north on the east line of said railroad seventy-four (74) rods, to the north line of said quarter section; thence east on said north line to the place of beginning; to have and to hold the same together with all and singular the appurtenances and privileges thereunto
15 belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and claim whatever of the parties of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

The sole purpose and object of this quitclaim being to sanction and confirm the sale of said hereinbefore-described premises this day made to said Derby by said John J. Walker as executor of the last will and testament of said Arthur F. Hopkins, and to sanction and make valid the deed of said premises made by said Walker as such executor to said Derby.

In witness whereof the said parties of the first part hereunto set their hands and seals the day and year first above written.

	JOHN J. WALKER.	[SEAL.]
	W'M BARNEWALL.	[SEAL.]
	MARY M. BARNEWALL.	[SEAL.]
	STARK H. OLIVER.	[SEAL.]
	KATE E. OLIVER.	[SEAL.]
	W. L. HOPKINS.	[SEAL.]
16 Witnesses as to	JULIET A. HOPKINS.	[SEAL.]
ALBERT W. SMITH,	MARIA WALKER.	[SEAL.]
SIDNIE B. MASON.	HENRY A. LOWE.	[SEAL.]
	CORNELIA C. LOWE.	[SEAL.]
	AUGUSTA H. RICE.	[SEAL.]

STATE OF DELAWARE,
City of Wilmington, ss:

I, Albert W. Smith, a notary public, duly commissioned and qualified, in said county, in the State aforesaid, do hereby certify that Juliet A. Hopkins, widow of Arthur F. Hopkins, deceased, who is personally known to me as the same person whose name is subscribed to the above deed, appeared before me this day in person, and acknowledged that she signed, sealed, and delivered the said instrument of writing as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal this fifth day of April, A. D. 1867.

[NOTARIAL SEAL.] ALBERT W. SMITH.
Notary Public.

STATE OF ALABAMA,
Mobile City & County, ss:

I, William Brooks, a notary public in said county, in the State
17 aforesaid, do hereby certify that John J. Walker, William Barnewall, Mary M. Barnewall, his wife; Stark H. Oliver, Kate E. Oliver, his wife; and William L. Hopkins, bachelor, personally known to me to be the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Mary M. Barnewall, wife of the said William Barnewall, Kate E. Oliver, wife of the said Stark H. Oliver, having been by me examined, separate and apart, and out of the hearing of their husbands, and the contents and meaning of the said instument of writing having been by me fully made known and explained to them, ancknowledged that they had freely and voluntarily executed the same, and relinquished all their right, title, and interest in and to the premises thereby conveyed, without compulsion of their said husbands, and
18 this they do not wish to retract the same.

Given under my hand and official seal this twenty-seventh day of March, A. D. 1867.

[NOTARIAL SEAL.] WILLIAM BROOKS,
Notary Public.

UNITED STATES CONSULATE,
Paris, Empire of France, ss:

I, John G. Nicolay, consul of the United States of America at Paris, in the Empire of France, do hereby certify that Maria Walker, wife of John J. Walker; Cornelia C. Lowe, & Henry A. Lowe, her husband; and Augusta H. Rice, widow, personally known to me to be the same person whose names are subscribed to the foregoing deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Maria Walker, wife of the said John J. Walker, and Cornelia C. Lowe, wife of the said Henry A. Lowe, having been by me examined, separate and apart, and out of the hearing of their
19 husbands, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to them, acknowledged that they had freely and voluntarily executed the same, and relinquished all their right, title, and interest in and to the

premises thereby conveyed, without compulsion of their said husbands, and that they do not wish to retract the same.

Given under my hand and official seal this second day of May, A. D. 1867.

[CONSULATE'S SEAL.] JNO. G. NICOLAY,
U. S. Consul.

[No. 139842. Filed June 4, 1867.]

STATE OF ILLINOIS, *County of Cook:*

I, Norman T. Gassette, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 4th day of June, A. D. 1867, and recorded in book No. 391, of deeds, on page 32.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court at Chicago, this 12th day of April, A. D. 1869.

[SEAL.] NORMAN T. GASSETTE,
Clerk of the Circuit Court, and
Ex-officio Recorder of Cook County.

[5-c't stamp.]

(Endorsed:) Filed April 12th, 1869. W'm H. Bradley, *Clk.*

20 *Kerfoot & Pierson & wives.—Deed to Derby.*

[Rev. stamp, $1 00]

This indenture made this fifth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, (1868,) between Samuel H. Kerfoot, and Annie W. Kerfoot, his wife, and J. Ford Pierson, and Jane L. Pierson, his wife, party of the first part, and William M. Derby all of Chicago, Cook County, Illinois, party of the second part, witnesseth: That the said party of the first part, for and in consideration of one thousand ($1,000) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, have remised, released, sold, conveyed, and quitclaimed, and by these presents do remise, release, sell, convey, and quitclaim unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part have, in and to the following-described lots, pieces, or parcels of land, to wit: The lands referred to in a certain agreement made between
21 the said William M. Derby, and the said Kerfoot & Pierson, dated March 19, 1867, and recorded in the recorder's office of said Cook County, in book 404, page 292; said land being particularly known as follows: The east half of block one, (1) the east half of block six, (6,) the whole of block four, (4,) and the whole of block five, (5,) and lots one, (1,) two, (2,) twenty-three, (23,) and twenty-four, (24,) of block twelve, (12,) of Pryor & Hopkins' subdivision of the west half of the northwest quarter of section three (3) of township thirty-eight, (38,) north of range fourteen, (14,) east of 3 p. m. And also the undivided half of a tract containing twenty (20) acres, more or less, lying east of the Rock Island Railroad, and in the northeast quarter of section four (4,) same township and range, bounded on the north by the north line of said section, and on the east by the east line of said section, and on the west by the Rock Island Railroad.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in any wise thereunto appertaining, and all the estate, right, title, interest, and
22 claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part hereunto set their hands and seals, the day and year first above written.

J. FORD PIERSON. [SEAL.]
JANE L. PIERSON. [SEAL.]
ANNIE W. KERFOOT. [SEAL.]
SAM'L H. KERFOOT. [SEAL.]

STATE OF ILLINOIS, *Cook County, ss:*

I, William L. Church, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that Samuel H. Kerfoot, and Annie W. Kerfoot, personally known to me as the same persons whose names are subscribed to the annexed instrument of writing, appeared before me this day, in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

23 And the said Annie W. Kerfoot, wife of the said Sam'l H. Kerfoot, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower, and all right, title, and interest to the lands and tenements therein mentioned, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand, and the seal of said court, this fifth day of September, A. D. 1868.

[CIR. COURT SEAL.] W'M L. CHURCH, *Clerk.*

STATE OF ILLINOIS,
Cook County, City of Chicago, ss:

I, C. J. Richardson, a notary public in and for said city, in said county, in the State aforesaid, do hereby certify that J. Ford Pierson, and Jane L. Pierson, his wife, personally known to me as the same person whose names are subscribed to the annexed instrument of writing,
24 appeared before me this day, in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

And the said Jane L. Pierson, wife of the said J. Ford Pierson, having been by me examined, separate and apart, and out of the hearing of her husband, and the contents and meaning of the said instrument of writing having been by me fully made known and explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower, and all right, title, and interest to the lands and tenements therein mentioned, without the compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this fifth day of September, A. D. 1868.

[NOTARIAL SEAL.] C. J. RICHARDSON,
Notary Public.

[No. 181305. Filed Sept. 5, 1868.]

STATE OF ILLINOIS, *County of Cook:*

I, Norman T. Gassette, clerk of the circuit court, and ex-officio
25 recorder, in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 5th day of Sept., A. D. 1868, and recorded in book No. 472, of deed, on page 393.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 12th day of April, A. D. 1869.

[SEAL.] NORMAN T. GASSETTE.
Clerk of the Circuit Court and
Ex-officio Recorder of Cook County.

[5-c't stamp.]

(Endorsed:) Filed April 12th, '69. W'm H. Bradley, cl'k.

On this day, to wit, the 19th day of April, A. D. 1869, in the record of the proceedings of said court, in chancery, in said entitled cause, is the following entry, to wit:

JOHN J. WALKER ET AL.
vs.
WILLIAM M. DERBY. } Chancery.

On motion of the complainants, by their solicitors, as per stipulation filed, leave is given them to file an amended bill of complaint, as a substitute for the original bill filed herein.

26 On the same day, to wit, the 19th day of April, A. D. 1869, came said complainants, by their solicitors, and filed in said clerk's office their amended bill of complaint in said entitled cause, which said bill, together with the stipulation of the parties thereto annexed, is in the words and figures following, to wit:

Amended bill.

To the judges of the circuit court of the United States for the northern district of Illinois:

John J. Walker, John J. Walker, executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, each, every and all of them of the city of Mobile, and citizens of the State of Alabama, and Juliet A. Hopkins, of the city of New York, & a citizen of the State of New York, complainants, by Hill & Dale, their solicitors, bring this their bill against William M. Derby, of the city of Chicago, and a citizen of the State of Illinois, defendant.

27 And thereupon complainants say:

That heretofore, on or about the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, complainants, John J. Walker, John J. Walker, executor of the last will and testament of Arthur F. Hopkins, deceased, and Maria Walker, were owners of in fee simple, and that the complainants Cornelia C. Lowe, wife of complainant Henry A. Lowe, Mary M. Barnewall, wife of complainant William Barnewall, Kate E. Oliver, wife of complainant, Stark H.

Oliver, Augusta H. Rice, Juliet A. Hopkins, and William L. Hopkins, as legatees, under and by virtue of said last will and testament, were interested in the following-described land and real estate, situate at the city of Chicago, in the county of Cook and State of Illinois, to wit:

An equal undivided half part of the first following-described tract of land, known as that part of the northeast quarter of section four, (4,) township thirty-eight (38) north, of range fourteen, (14,) east of
28 third principal meridian, bounded and described as follows: Commencing at the northeast corner of said quarter section; running thence south seventy-four (74) rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad, seventy-four (74) rods, to the north line of said quarter section; thence east on said line to the place of beginning.

Also, the whole of the following-described pieces or parcels of land, to wit: The east half of block numbered one, (1,) and the east half of block numbered six, (6,) the whole of blocks numbered five (5) and four, (4,) and lots numbered one, (1,) two, (2,) twenty-three, (23,) and twenty-four, (24,) in block numbered twelve, (12,) all in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section numbered three, (3,) in township and range aforesaid; which said lands were however subject to certain rights and privileges then enjoyed by
29 Union Stock Yard and Transit Company, as touching said premises.

And that afterwards on said day, at Chicago aforesaid, complainants, by and through the complainant John J. Walker, as agent and as such executor, acting on their behalf & for himself, employed Samuel H. Kerfoot and J. Ford Pierson, who then and there were doing business as real estate agents and loan brokers, under the firm name and style of S. H. Kerfoot & Co., to sell said real estate for your orators and oratresses, and to that end agreed to pay said S. H. Kerfoot & Co., for their services and commissions in that behalf, five per centum of and on the first three thousand dollars, and two and one half per centum on the balance of the purchase money to be had for said real estate, on sale thereof th'ough said S. H. Kerfoot & Co., who then and there in consideration thereof, undertook and agreed to and with the complainants to serve the complainants faithfully and to the best of their ability in making sale of said real estate.

30 And complainants further say that they are informed and believe, and on their information and belief, charge the fact to be, that in breach of the trust thereby in the said S. H. Kerfoot & Co., by complainants reposed and confided, and by the said S. H. Kerfoot & Co. as aforesaid undertaken and accepted, which trust was then well known and understood by the defendant, and contrary to the duty of the said S. H. Kerfoot & Co., and to equity and good conscience in that behalf, the defendant William M. Derby, secretly and covertly uniting, combining, and confederating with the said S. H. Kerfoot & Co., afterwards and on or about the 16th day of March, in the year of our Lord one thousand eight hundred and sixty-seven, at the city of Chicago, and taking undue advantage of the aforesaid relations of trust and confidence between the said S. H. Kerfoot & Co. and your orators and oratresses in the premises, agreed to become, with the said S. H. Kerfoot & Co., the said agents of complainants, well knowing them to be such, copurchasers and joint owners of said real estate, at a price far
31 below its then cash value, and to that end, they, the defendant William M. Derby, thus uniting and confederating and combining with the said S. H. Kerfoot & Co. in said breach of trust, with them

on said day, for the purpose of effecting & concealing said joint purchase from complainants, arranged and agreed together to hold out to complainants the said William M. Derby to be the sole purchaser at the sum of twenty-five thousand six hundred dollars, and that after making such combination and confederacy, and pursuant to such arrangement and agreement by the said confederates in that behalf made, they, the said defendant and S. H. Kerfoot & Co., did hold out to the complainants that the said William M. Derby was the sole purchaser of said premises, through said S. H. Kerfoot & Co., as complainants' agents, at the price of twenty-five thousand six hundred dollars, and afterwards, in that way & by such means, procured, on or about the 19th day of March, 1867, from your orator John J. Walker, executor as afore-
32 said, a deed of all said real estate, purporting to convey the said real estate to defendant to bear date March 16, 1867, to be acknowledged before S. H. Kerfoot, justice of the peace, and afterwards caused the same to be recorded in the recorder's office, in said Cook County, in book 379 of deeds, on page 466.

And that not knowing and understanding that the said S. H. Kerfoot & Co. were to be or become interested in said purchase & premises, and all the while reposing trust and confidence in them as complainants' agents, and believing and understanding that the said William M. Derby was the sole purchaser of said premises, and that twenty-five thousand six hundred dollars was an adequate price, the complainant John J. Walker, executor as aforesaid, executed said deed to said William M. Derby & received from the said defendant the sum of eight thousand two hundred dollars in cash; and the defendant thereupon executed and delivered to said S. H. Kerfoot & Co. his certain
33 promissory notes in writing, to wit: Three notes payable to the order of said Walker, executor, each for $1,812 50, and due respectively on or before 18th March, 1868, 1869, & 1870, with interest at six per centum per annum, at the office of S. H. Kerfoot & Co., and to secure the same further by trust deed, purporting to bear date March 18, 1867, conveyed the tract of land hereinbefore described & situate in section 4, to one Henry S. Munroe, which deed is of record in said register's office in book 379, page 468; also his three certain other promissory notes in writing payable as aforesaid, each for three thousand nine hundred eighty-seven and $\frac{50}{100}$ dollars, & due respectively, on or before the 18th March, 1868, 1869, and 1870, at the office of S. H. Kerfoot & Co., with interest at six per centum per annum, and to secure the same further by trust deed, purporting to bear date March 16, 1867, conveyed the rest of said land to said Henry S. Munroe, which trust deed is of record in said register's office, in book 380, on page 372.

And that afterwards, the said defendant William M. Derby,
34 caused to be preposed a quitclaim deed to be executed by the other complainants herein, purporting to convey to him their respective interests in said real estate, and directed the said S. H. Kerfoot & Co. to retain the said notes and trust deeds, until he said complainants should execute and deliver such quitclaim deed to the defendant.

And complainants further say that your orator John J. Walker, believing the said S. H. Kerfoot & Co. to have acted according to the trust in them reposed, & not knowing the contrary thereof, afterwards, on the 19th day of March, 1867, paid the said S. H. Kerfoot & Co. the sum of seven hundred and fifteen dollars commissions, as per agreement in that behalf made as aforesaid, for selling said real estate for your orators and oratresses, to said William M. Derby.

And complainants further say that, as they are informed and recently learned, and on their information and belief charge the fact to be, the said defendant afterwards, on said 19th day of March, 1867, re-
35 ceived of said S. H. Kerfoot & Co. one-half of the commissions which the said John J. Walker paid to said S. H. Kerfoot & Co., as hereinbefore set forth and stated, as the said defendant's share thereof, by reason of said confederacy, &c.

And complainants further say that, as they have recently been informed, and on their information and belief charge the fact to be, the said defendant and the said S. H. Kerfoot & Co., to wit, S. H. Kerfoot & J. Ford Pierson, to further complete said joint purchase, and share and own the said real estate together, and to express the understanding and agreement by them secretly, corruptly, and covertly made as aforesaid, under date of March 19, 1867, made, executed, and interchangeably delivered each to each an agreement in writing, of which the following is a copy, to wit:

"In consideration of three hundred and seventy-five dollars, to me paid by Samuel H. Kerfoot and J. F. Pearson, known as S. H. Kerfoot & Co., of the city of Chicago, I do hereby agree to sell and quit-
36 claim to said Kerfoot & Co. at any time before the first day of Sept., A. D. 1867, said Kerfoot & Co. agreeing to purchase one-half of the property by me purchased of John J. Walker, the executor of Arthur F. Hopkins, deceased. It is agreed that if the said Kerfoot & Co. shall pay to me in cash four thousand and one hundred dollars, and the further sum of eight thousand and seven hundred dollars payable in one, two, and three years, in equal payments, and bearing interest at six per cent. per annum, and secured by deed of trust. It is further agreed that if the said Kerfoot & Co. should fail to comply with the conditions of this agreement, or fail to make payment before the first day of Sept., 1867, then this agreement to be void, and the three hundred and seventy-five dollars so paid by said Kerfoot & Co., shall be forfeited to me, and retained by me, as stipulated damages for the non-fulfillment of said Kerfoot & Co. part of this agreement.

"Dated Chicago, March 19, 1867.

"WM M. DERBY. [SEAL.]
"S. H. KERFOOT. [SEAL.]
"J. F. PIERSON." [SEAL.]

37 Which said written instrument was, although made prior to the said deed so executed by the said John J. Walker, executor, yet all the while kept secretly from all said complainants.

And complainants further say that when they were afterward, to wit, on or about the first day of May, A. D. 1867, by the said John J. Walker, requested to confirm the said sale to defendant William M. Derby, in order to obtain the said notes and trust deeds, being all the while wholly ignorant of the said combination, confederacy, and secret and covert agreement between said S. H. Kerfoot & Co. & the defendant, and having not even a suspicion of any breach of trust on the part of S. H. Kerfoot & Co. in the premises, the complainants, Maria Walker, William Barnewall, Mary M. Barnewall, Henry C. Lowe, Cornelia C. Lowe, Kate E. Oliver, Stark H. Oliver, Augusta H. Rice, Juliet A. Hopkins, & William L. Hopkins, united with said John J.
38 Walker, and executed their said deed of quitclaim, caused to be prepared as aforesaid by the defendant, purporting to bear date of the 16 March, 1867, & to convey all their interest in and to said premises respectively to said William M. Derby, to fully confirm the sale to

him as sole purchaser thereof, and not otherwise; and that the said John J. Walker, for himself & for the rest of the complainants for that purpose, and still ignorant of the said combination, confederacy, and secret agreement, reduced to writing as aforesaid, delivered said deed of quitclaim at the city of Chicago aforesaid, to the defendant on or about the 30th day of May, A. D. 1867, and received therefor the said notes & trust deed from said S. H. Kerfoot & Co., & completed, as he until recently supposed, a sale of said real estate to said defendant, which said quitclaim deed is of record in said recorder's office in book 391, page 321.

And complainants further say that afterwards, and before complainants learned of said joint purchase and interest of said S.
39 H. Kerfoot & Co., and before said written instrument expressing or purporting to express said corrupt & secret agreement between said confederates was recorded, & on or about the 1st day of June, A. D. 1867, the said defendant paid the sums of money secured by his said notes & trust deeds to and for the use of the complainants, and thereupon the said complainants caused to be surrendered and delivered up the same to the defendant, all the while supposing the defendant to be the sole purchaser, & the price paid for said real estate to be its full cash value at the date of said supposed sale.

And the complainants further say that they are informed and believe, and on their information and belief charge the fact to be, that the said sum of twenty-five thousand six hundred dollars was a grossly inadequate price for said lands at the time when the said supposed sale was made, & that the defendant well knew that fact, and, together with the said S. H. Kerfoot & Co., concealed the same from the complain-
40 ants; that defendant well knew, and all the while understood, that said S. H. Kerfoot & Co. had, as complainants' agents, been offered better prices by responsible parties; all which facts, by reason of the trust & confidence reposed in said S. H. Kerfoot & Co. as aforesaid, were unknown to the complainants.

And complainants further say that since said agreement between the said S. H. Kerfoot & Co. & said defendant was made as aforesaid, they the defendant & said S. H. Kerfoot have resorted to various pretexts, shifts, excuses, assertions, and subterfuges to conceal and cover up the interest of the said S. H. Kerfoot & Co. acquired and secured as aforesaid in said premises, but that as soon as the said transaction became fully known and understood by the complainants they set about the bringing of this their bill.

And complainants further say that said written agreement between said William M. Derby & S. H. Kerfoot & J. F. Pierson was re-
41 corded in said recorder's office, in book 404, page 292, but complainants had no actual knowledge thereof until recently, & have not in any way or manner ratified or confirmed the said joint purchase by the said confederates S. H. Kerfoot & Co. & William M. Derby.

And complainants further say that, heretofore, to wit, on the 5th day of September, A. D. 1868, the said Samuel H. Kerfoot & J. Ford Pierson, by deed of quitclaim of that date, transferred and conveyed their said interest in said purchase & premises to the defendant, which deed is of record in said recorder's office, in book 472, page 393.

And complainants further say that of said real estate the said defendant has now in his possession the following-described lands, to wit, the east half of block one, (1,) the west half of block five, (5,) and lots 1, 2, 23, & 24, in block twelve, (12,) in Pryor and Hopkins' subdivision afore-

said, and as your orators & oratresses are informed and believe,
42 and, therefore, upon their information and belief charge the fact to be, is about to dispose of the same, and to convert the same into cash, claiming the same as his own property.

And complainants further say that of said lands the said defendant heretofore, to wit, on or about the 9th day of September, 1868, transferred and conveyed by his deed of record in said recorder's office, in book 481, page 531, the tract situate in section four (4) as aforesaid, the said east half of block six, (6,) and the said east half of block five, (5,) to one Alonzo Rawson, and has received therefor the sum of eighty-six thousand dollars, or holds securities therefor, or a portion thereof, which said securities are, or were as follows, to wit, four trust deeds, executed of date Aug. 5, 1868, by said Rawson to said Henry S. Munroe, and of record in said recorder's office respectively, to wit: one in book 466, page 610; one in book 466, page 613; one in book 466, page 616;
43 and one in book 470, page 291, together with the notes respectively described in said several trust deeds.

And complainants further say that said defendant hath heretofore, to wit, on the first day of August, 1868, sold of said real estate, block four, (4,) to one Samuel Wing, & by deed, dated on that day, conveyed the same to Samuel Wing, and received therefor the sum of thirty thousand dollars, part in cash, & part secured as hereinafter set forth, which deed is of record in said recorder's office, in book 471, page 23, and also received from said Samuel Wing a trust deed to said Henry S. Munroe, securing $14,000, as therein described, to be paid to the defendant, which said trust deed is recorded in said recorder's office, in book 471, on page 25.

And complainants further say that the defendant holds said securities and said proceeds of said sales as he insists as his own property,
44 but the complainants here insist that by reason of the premises, and according to equity and good conscience, said defendant in truth and in fact holds said proceeds, securities, and property in trust for the complainants, and not otherwise, and should be compelled to account to and with the said executor, and to him, or to a receiver, surrender all said money and securities, and yield and deliver up the said east half of block one, (1,) and west half of olock five, (5,) and said lots 1, 2, 23, & 24, in block 12, as well as any other part of said lands so purchased of complainants as aforesaid, which he still holds, & has not sold to bona fide purchasers, & reconveyance thereof make to said executor, or to said receiver, after deducting from said moneys enough thereof to repay him, the defendant, the said $25,600, & interest, so paid for said lands to the complainants as aforesaid, and that the defendant should full and perfect disclosure make of all said sales, and all and any
45 other sales, (if any,) and all the rents, issues, and profits of said property since the same came to his hands; and that said deeds from said executor and said complainants, of date March 16, 1867, except as to the property by the defendant to bona fide purchasers before the filing of their bill herein sold and conveyed, should be declared null and void, and vacated, cancelled, annulled, and set aside.

And that said defendant admit moneys enough in his hands to repay him for said $25,600 & interest, which he has received from such sales as aforesaid.

And the complainants, now here in open court, bring the sum of $25,600, & interest thereon from said 16th day of March, 1867, and all moneys paid by said defendant to said John J. Walker, executor as aforesaid, or otherwise, for said lands, to be refunded and paid over to

said defendant, under the orders of this hon. court, and they here-
46 by tender the same to the defendant, or they hereby authorize and direct him, when he shall have fully accounted to & with the said executor, & has given up the property still remaining in his hands, together with the balance of money found due (if any) to the complainants, & all outstanding securities aforesaid, to retain and keep out of, and deduct from, the proceeds of complainants' said lands the said $25,600, & interest thereon, which defendant has paid to complainants as aforesaid; and the complainants further say that they hereby consent that out of the moneys received by the defendant from said sales, or from said property as aforesaid, the defendant shall be repaid the said $25,600 and interest, and all other sums of money he may be entitled to, if any, and that they, the complainants herein, on their part, furthermore offer to do, perform, and abide by whatever else may be according to equity & good conscience, as this hon. court may order, direct, or decree in the premises.

47 And said complainants further bring into court exemplifications of all said several deeds and said written instruments, and of said last will and testament, & probate thereof, and file the same herein, in support of this their bill.

And said complainants further say that they are informed and believe, and on their information and belief charge the fact to be, that the said defendant has already incumbered the west half of block five (5) aforesaid in the sum of $10,000, and to that end has predicated on said west half of block five (5) a mortgage deed, dated Sept. 24, 1868, to one Joseph B. Shepard, of record in said recorder's office, in book 122, page 450, securing to said Shepard or his assigns the payment of two certain notes for $5,000 each, therein described, and threatens to incumber the balance of said lands, and to transfer and dispose of all said lands, securities, and moneys, to prevent your orators & oratresses from obtaining adequate relief in the premises.

48 And complainants further say that the said S. H. Kerfoot & Co. were selected by the said John J. Walker as agents of complainants as aforesaid for the reason that he was a stranger in Chicago, & that all said complainants were non-residents, & had no knowledge of said lands, except what they derived from said Kerfoot & Co.

In tender consideration whereof, and forasmuch as the complainants are remediless in the premises at and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this nature are properly cognizable and relievable.

To the end, therefore, that the said William M. Derby may full, true, direct, and perfect answer make, answer under oath being hereby expressly waived, according to the best of his knowledge, information, and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly in every respect as if the same were here
49 again repeated, and he thereunto particularly interrogated.

And that the said William M. Derby may admit moneys sufficient in his hands arising from the sales of said parts of said lands, which he has sold to the said Samuel Wing and Alonzo Rawson, or other persons, to repay him the purchase money by him paid to said executor for said lands, and that the said William W. Derby may otherwise set forth a particular account of the terms of the sale of said block four to said Samuel Wing, and bring into court the moneys and securities and other property received therefor, as well as the terms of the sale by said William M. Derby to the said Alonzo Rawson, and to other

persons, (if any,) and bring into court the moneys and securities and other property by said William M. Derby received of the said Rawson and other persons, (if any,) as the proceeds of said sale, together with the moneys received on said mortgage to said Joseph B. Shepard,
50 and a full, true, and just account of all the rents, issues, and profits, which have come to his hands from any part or portion of said lands, and full and complete disclosure make of all his acts and doings in the premises.

And that, after deducting the moneys paid to said executor, the said William M. Derby pay over to the said executor the balance of said moneys remaining in his hands arising from his said sales and from said lands in any way.

And that the said William M. Derby be ordered and decreed to re-transfer and convey to said executor, free of all incumbrance of every name and nature, the following-described real estate, to wit: The east half of block one (1) and the west half of block (5,) and lots one (1,) two (2,) twenty-three (23,) and twenty-four (24,) all in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section 3, township thirty-eight, range fourteen (14,) east of the 3rd p. m., and surrender, and deliver, and yield up to said executor the full, complete,
51 quiet, and peaceable possession thereof.

And that the said William M. Derby be enjoined and restrained perpetually from in any way or manner interfering or intermeddling therewith.

And that to prevent the said William M. Derby from disposing of said securities, and from conveying, or in anywise incumbering any further part or portion of said real estate, from the filing of the bill herein, the said William M. Derby may be enjoined and restrained on that behalf until the further order of court, as well as during the pendency of this suit.

And that the complainants may have such further or other relief as the nature of the case may require, and as shall be agreeable to equity.

May it please your honors to grant unto your orators and oratresses an order or writ of injunction, or orders or writs of injunction, as prayed for above, restraining and enjoining the said William M. Derby
52 in manner and for the purpose hereinbefore specified.

And may it further please your honors to grant unto your said complainants the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to said William M. Derby, commanding him, by a certain day, and under a certain penalty therein to be inserted, to be and appear before the said court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity & good conscience.

And the complainants will ever pray, &c.

JOHN J. WALKER,
JOHN J. WALKER, *Executor*,
MARIA WALKER,
WILLIAM BARNEWALL,
MARY M. BARNEWALL,
HENRY A. LOWE,
CORNELIA C. LOWE,
AUGUSTA H. RICE,
JULIET A. HOPKINS,
WILLIAM L. HOPKINS,
STARK H. OLIVER, &
KATE E. OLIVER,

53 By HILL & DALE,
Their Solicitors.

HILL & DALE, *Complainants' Sol's.*
A. L. COLLINS, *of Counsel.*
EDW'D J. HILL, *of Counsel.*
W. C. REYNOLDS, *of Counsel.*

State of Illinois, Cook County, city of Chicago, ss:

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Edward J. Hill, being duly sworn, says that he is one of the solicitors and of counsel for the complainants named in the foregoing bill, and that he verifies and makes oath hereto on their behalf for the reason that all of said complainants reside out of, and are now beyond, the jurisdiction of the court where the same is to be filed, and that the deponent has better knowledge of most of the facts in the bill alleged and charged than said complainants.

Deponent further says that he hath carefully read said bill and that the facts set forth therein are true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

Deponent further says that his knowledge and information in
54 all these matters are derived by him from John J. Walker, from letters & documents signed by S. H. Kerfoot, S. H. Kerfoot & Co., & from the said exemplifications of record in said bill mentioned. & further deponent saith not.

EDWARD J. HILL.

Subscribed & sworn to before me this 15th day of April, A. D. 1869.
[NOTARIAL SEAL.] AARON B. MEAD,
Notary Public.

Circuit court of the United States for northern district of Illinois, in chancery.

JOHN J. WALKER ET ALS.
vs.
WILLIAM M. DERBY.

It is hereby stipulated and agreed by and between the parties to this suit that the annexed & foregoing bill may be filed and take the place of the bill already filed from and after this date, & that the motion for injunction herein may be continued for hearing until Wednesday,
55 April 21st, A. D. 1869, at 10 o'clock, a. m., before the court or the judge thereof, & that said motion may, after this date, be predicated on said bill hereto annexed & upon the answer of defendant & affidavits to be filed by either party, if the same be filed by that time.

Dated Chicago, April 15, 1869.

MONROE & MCKINNON,
Sol'rs for Defendant.
HILL & DALE,
Sol'rs for Complainant.

(Endorsed:) Filed April 19, 1869. W'm H. Bradley, cl'k.

On the same day, to wit, the 19th day of April, A. D. 1869, there was filed in said clerk's office, in said entitled cause an exemplification from the records of the probate court of Mobile County, State of Alabama, which said exemplification is in the words and figures following, to wit:

56 *Probate of will.*

STATE OF ALABAMA, *Mobile County:*

MOBILE, 28 *December*, 1865.

To the Honorable George W. Bond, judge of the court of probate of said county:

The petition of John J. Walker and William G. Jones respectfully represents unto your honor that the late Arthur F. Hopkins, who was an inhabitant of this county at the time of his death, departed this life on the eighth day of November, A. D. 1865, in the city and county of Mobile, Alabama, leaving a last will and testament, dated the 12th day of May, A. D. 1859, duly signed and published by him, and attested by Robert H. Smith, of Mobile County, Alabama; Henry C. Semple, of Montgomery County, Alabama; and Robert B. Armistead, now deceased, late of Mobile County, Alabama, in which your petitioners are named as executors, and also a codicil to the said will, dated the 18th day of May, A. D. 1861, duly signed and published by him, and attested by W. I. Hardee, now of Marengo County, Alabama; Levi W. Lawler, of Talladega County, Alabama; and William H. Anderson, of Mobile County, Alabama, which said will and codicil are herewith pro-
57 duced to your honor and propounded for probate and record in this court.

Your petitioners further state that the widow of the said decedent is Mrs. Juliet A. Hopkins, who resides in this county, and that the next of kin of said decedent are his children, Maria Walker, wife of your petitioner, John J. Walker, residing in this county; Augusta H. Rice, widow, residing in this county; Mary M. Barnewall, wife of William Barnewall, jr., residing in this county; Kate E. Oliver, wife of Starke H. Oliver, residing in this county; William Lee Hopkins, residing in this county; Arthur M. Hopkins, now residing in the Kingdom of England, and Cornelia C. Lowe, wife of Henry A. Lowe, now residing in the Kingdom of England, each of whom is over twenty-one years old, and Lewellan Blevins, now about eleven years old, and Louisa Blevins, now about thirteen years old, infant children of Louisa Blevins, deceased, who was a daughter of the said Arthur F. Hopkins, deceased. The father of the said infants is dead and they now reside with, and are under the custody and control of, your petitioner, John J. Walker, in this county, and your petitioners believe they have no lawfully-appointed guardian.

In consideration of all which your petitioners pray that a day may be set for the hearing of the matter of this petition, that subpœnas
58 may issue to bring in the said subscribing witnesses, to testify on such appointed day; that due notice of this application may be given to the said widow and next of kin of said decedent; and that such other proceedings, orders, and decrees may be had and made in the premises as may be requisite and proper to effect the due probate and record of said will and codicil according to law. And as in duty bound, &c.

JOHN J. WALKER.
W'M G. JONES.

Subscribed & sworn to this Dec. 30th, 1865.

GEO. W. BOND, *Judge.*

Order.

The State of Alabama, Mobile County, probate court.

ARTHUR F. HOPKINS, DECEASED, IN THE matter of his will, &c.

PROBATE COURT, *Mobile County:*

DECEMBER 30TH, 1865.

This day came John J. Walker and William G. Jones, and filed their application in writing and under oath, therewith producing and filing in this court instruments of writing, purporting to be the last will and testament, and codicil thereto, of said Arthur F. Hopkins, deceased; and praying for such orders, decrees, and proceedings as may be proper and requisite for the due probate and record of said will in this
59 court. And it appearing to the court from said application that said applicants are named as executors under said will and codicil; that Juliet A. Hopkins, who resides in this county, is the widow of said deceased, and that the next of kin of said decedent are as follows, viz, Maria Walker, wife of said John J. Walker; Augusta H. Rice, widow; Mary M. Barnewall, wife of William Barnewall, jr.; Kate E. Oliver, wife of Starke H. Oliver; William L. Hopkins, all residing in this county; Arthur M. Hopkins, residing in England; and Cornelia C. Lowe, wife of Henry A. Lowe, now residing in England, all of whom are children of said decedent and of full age. Also the following grand-children, viz, Lewellen Blevins, and Louisa Blevins, minors under the age of fourteen years, children of Louisa Blevins, deceased, who was a daughter of said Arthur F. Hopkins, deceased, and who are now in the care and custody of said John J. Walker, who resides in this county,

It is therefore ordered by the court that the second day of February, 1866, be set as a day for hearing testimony in proof of said instruments as such will and codicil; that said widow and such of said next of kin as are within this State, and are over the age of fourteen years, be notified of this proceeding, and of the day above set for hearing the matter by citation to be served upon each of them at
60 least ten days before said day of hearing; and such of said next of kin as are under the age of fourteen years, to have the same kind of notice, to be served on their custodian for them; and that such of said next of kin as are without the State be notified of this proceeding, and of the day for hearing the matter, by publication, to be continued for three successive weeks in the Mobile Advertiser and Register, a newspaper published in this county.

And the court adjourned to the 2nd day of January, A. D. 1866.

Citation.

The State of Alabama to any sheriff of the State of Alabama, greeting:

We command you to cite Juliet A. Hopkins, Maria Walker, wife of John J. Walker, Augusta H. Rice, William Barnewall, jr., and Mary M. Barnewall, his wife; Starke H. Oliver, and Kate E. Oliver, his wife; and William L. Hopkins; and, also, Lewellyn Blevins, and Louisa Blevins, minors under the age of fourteen years, now in the custody of the said John J. Walker, if to be found in your county, to be and appear before the honorable the probate court, to be holden for Mobile County, at the court-house of said county in the city of Mobile, on the 2nd day of Feb-

ruary, 1866, to show cause, if any they have, why the application
61 this day filed in said court by John J. Walker and William G. Jones, for the probate of certain instruments of writing purporting to be the last will and testament and codicil thereto of Arthur F. Hopkins, deceased, should not be granted, and said will and codicil admitted to probate and record in said court; and further to do and suffer such things as shall be considered and ordered in the premises by the court aforesaid.

Herein fail not, and have you then and there this writ, &c.

Witness George W. Bond, judge of the probate court of Mobile County, at office this 30th day of December, A. D. 1865.

GEO. W. BOND, *Judge.*

Issued January 12th, 1866. Received, January 12th, 1866, and on the 15th day of January, 1866, I served copies of the within citation on Juliet A. Hopkins, Maria Walker, Augusta I. Rice, W'm Barnewall, jr., Mary M. Barnewall, Starke H. Oliver, Kate E. Oliver, W'm L. Hopkins, and on John J. Walker, who has the custody of Lewellin Blevins, and Louisa Blevins, minors under the age of fourteen years.

M. D. GRINNELL,
Sheriff M. C.,
By C. BURKE, *D. S.*

62 *Subpœna.*

The State of Alabama to any sheriff of the State of Alabama, greeting:

You are hereby commanded to summon Robert H. Smith and William H. Anderson, to appear before the judge of the probate court to be holden for Mobile County, at the court house in the city of Mobile, on the second day of February, 1866, to give evidence in behalf of the applicants in a certain matter now pending in said court, wherein application is made for the probate of the will and codicil of Arthur F. Hopkins, dec'd; and this you shall in no wise omit under the penalty prescribed by law.

Herein fail not, and have you this writ at the office of the judge of said court.

Witness, George W. Bond, judge of said court, at office this 30th day of Dec. 1865.

Issued on the 11th day of January, in the year of our Lord 1866.

Attest: GEO. W. BOND, *Judge.*

(Endorsed:) Executed.

M. D. GRINNELL,
Sheriff M. C.,
By E. GRIOWR.

63 State of Alabama, Mobile County, probate court.

ARTHUR F. HOPKINS, DECEASED, IN THE MATTER of the probate of his last will and testament.

PROBATE COURT, *Mobile County:*

FEBRUARY 2ND, 1866.

This being the day appointed for hearing the application of John J. Walker and William G. Jones, which was heretofore filed in this court

for the probate of instruments of writing purporting to be the last will and testament and codicil thereto of said deceased, now come the said applicants, and James Bond, now here, is appointed by the court, and consents to act as guardian ad litem for the minor heirs of said decedent who are named in said application; and it appearing to the satisfaction of the court that the notice of the said application and of the time appointed for hearing the same has been given in pursuance of law, and of the former order of this court made and entered in the premises on the thirtieth day of December, 1865, by publication continued for three successive weeks in the Mobile Advertiser and Register, a newspaper published in this county, and by citations personally served as directed in said former order: Now, on motion of said John J. Walker and William G. Jones, the court proceeds to hear said application; and it appearing to the satisfaction of the court from the testimony
64 of Robert H. Smith that he signed said instrument of writing, purporting to be the last will and testament of said decedent, and which writing is now shown to him, on the day of the date thereof, in the presence of said testator, and at his request, as a subscribing witness to the same, the said testator then declaring that said instrument constituted his last will; that Henry C. Semple, who is also a subscribing witness to said will, is a resident of Montgomery County, in this State, and that Robert B. Armistead, who was also a subscribing witness to said will, has departed this life since the execution thereof; and it further appearing to the satisfaction of the court from the testimony of William H. Anderson that he signed said instrument of writing purporting to be a codicil to the last will and testament of said decedent, and which writing is now shown to him, on the day of the date thereof, in the presence of said testator, and at his request as a subscribing witness to the same, the said testator then declaring that said instrument constituted a codicil to his last will and testament; that William I. Hardee, who is also a subscribing witness to said codicil, is a resident of Marengo County, in this State; and that Levi W. Lawler, who is also a subscribing witness to said codicil, is a resident of Talladega
65 County, in this State; and it being also shown to the court by satisfactory proof that said testator was of the full age of twenty-one years and upwards, at the time of making said will and codicil, and that he was of sound mind, and fully capable of making said will and codicil, it seems to the court that said application should be granted.

It is therefore ordered, adjudged, and decreed by the court that the said will and codicil of said Arthur F. Hopkins, deceased, be received, and the same are hereby declared to be duly proven as the last will and testament, and codicil thereto, of said decedent, and as such admitted to probate, and ordered to be recorded, together with the proof thereof, and all other papers on file relating to this proceeding.

And the court adjourned.

Will.

The last will and testament of Arthur F. Hopkins, of the city of Mobile.

I, Arthur F. Hopkins, of the city of Mobile, being of sound mind, do make and publish this my last will and testament, revoking all other wills by me heretofore made, in manner and form following, that is to say:

Item first. I hereby give to my executors full power and authority to

sell and convey all my houses and lots in the city of Mobile, and
66 all other lands or real estate I may own, wherever the same may be situated, at such times, and upon such terms, as they may consider most advantageous. I have a title to about thirty-six and a quarter acres of land at and adjoining the city of Chicago, in the State of Illinois, but my daughter, Maria Walker, has an undivided interest in them of two acres, which can be ascertained from an instrument in writing, I made in her favor; and my son-in-law, John J. Walker, has an undivided interest of two and a half acres in them, being in that part of my land consisting of ten acres belonging to James W. Pryor and myself, and for which the said Walker holds my written contract.

Item second. I hereby give my executors full power and authority to sell my slaves, not herein otherwise disposed of, and all other personal property not otherwise disposed of herein. I hope and expect the slaves will be purchased by some one or more of my children or my wife. The slaves and other personal property to be sold for cash, or upon such a credit as my executors may determine. I give my executors full authority, also, to sell any stock I own, or may hereafter own, in any incorporated company, in such manner and on such terms as they may judge best.

Item third. The education of my son, William Leigh Hopkins,
67 is not yet completed. I have given to each of my other children a liberal and costly education, and it is due to *to* William Leigh, that his should be of the same character, and paid for out of the bulk of my estate, and not from his share. I therefore direct my executors, in the event of my death before his education shall have been completed, to set apart and appropriate out of the bulk of my estate, the sum of one thousand dollars a year for each year from the time of my death till my son William Lee shall become twenty-one years old.

Item fourth. I give and bequeath the proceeds of the sales hereby authorized of all my property, real and personal, to my wife, my seven living children, and John J. Walker, as trustee for my two grand-children, Louisa H. Blevins, and Lewellyn Blevins, the children of my daughter, Louisa Blevins, deceased. In making the division and distribution aforesaid of the proceeds of said sales among my legatees, the amount or value of the gifts and advancements made to each, as hereinafter stated, is to be taken into account; and the said proceeds so divided into nine parts as that the shares, including the value of the gifts and advancements heretofore made to each, as aforesaid, shall be equal, thus making each legatee, in the aggregate, equal. To fix and determine the amount of such gifts and advancements, for the
68 purpose of the division and distribution aforesaid, I state and hereby declare, that I have heretofore given to my wife, Juliet A. Hopkins, a negro woman named Ellen, valued at one thousand dollars; to my son, Arthur M. Hopkins, twenty-five hundred dollars; to my son, William Leigh Hopkins, a young mulatto man named John, and Henry, a brother of John, between nineteen and twenty years old, of the aggregate value of three thousand dollars; to my daughter, Maria Walker, property of the aggregate value of eight thousand dollars; to my deceased daughter, Louisa H. Blevins, property of the aggregate value of five thousand dollars; to my daughter, Mary Mosely Hopkins, four slaves, (Jane, and her son Claude; Sophronia, and her son Sidney,) of the aggregate value of three thousand dollars; silver plate, table and bed linen of the value of five hundred dollars; and a draft on Walker, Mead & Co., for two thousand dollars, amounting together to five thousand five hundred dollars; to my daughter, Cornelia Carter Lowe, five

negroes, James, Theodore, Malvina, and Hepsy, and her child , of the aggregate value of five thousand , and five hundred dollars in money, amounting together to five thousand five hundred dollars; to my daughter, Kate Erskine Hopkins, three negroes, (Alice, and her son James; and Lucy, a girl aged about twelve years,) of the aggregate value of twenty-five hundred dollars.

The late Mrs. Elizabeth Mosely, widow of the late Judge John Mosely, was an aunt of my children, and lived as a member of my family and without charge, from the death of her husband, in 1827, till her own death, in 1842. I was his sole executor, and charged and received no compensation for my services in my representative character. I managed her estate during her widowhood at my own expense, and acted as her sole executor, without receiving any compensation. By her last will she bequeathed between twenty and thirty negroes to my daughter, Augusta H. Rice, upon an understanding between us that it would be proper for me to treat that legacy as an advancement by myself to Augusta. The testatrix requested me in her will to keep these negroes in my possession, and employ them on my own plantation with my own hands. I complied with the request, and for the want of a sufficient quantity of cleared land, their services were worth but little to me after supporting them—the amount could not now be accurately settled. If I were to treat the legacy as an advancement, it would be more than double the amount of the value of their services to me, and I therefore bequeath to my daughter, Augusta H. Rice, one-ninth part of my property described in the fourth item of this will, exempt from any charge of the legacy aforesaid to her as an advancement, but upon the condition that she discharges and releases my estate and executors from all claim for *heirs* and compensation for the services of the said slaves while they were employed

A. F. HOPKINS. [SEAL.]

upon my plantation. In the distribution of my estate, the said several sums which I have specified as advancements, are to be charged to the legatees, respectively, who received them; the advancement to my deceased daughter, Louisa, to be charged to John J. Walker, as trustee for her children.

Item fifth. The portion hereby given to John J. Walker, as trustee for my two grand-children, Louisa H. Blevins and Lewellyn Blevins, is to be held and used by him for their benefit, and to be equally divided between them, when either shall become of age or marry; and if either of them shall die under the age of twenty-one years and unmarried, the whole shall belong to the survivor of them; and if both of them shall die under the age of twenty-one years, and unmarried, this portion of property shall be equally divided among my children.

Item sixth. My wife, Juliet A. Hopkins, is entitled in her own right, and as her separate property, to a sum amounting to fifteen thousand and two hundred dollars, consisting of the purchase-money, the receipt of which is daily expected, for her farm in Jefferson County, Virginia, which she has recently sold and conveyed; and a bond and mortgage for six thousand dollars, in the hands of Moran Brothers, of the city of New York, for collection. For this reason, and in compliance with her own request, I give her a child's part only, as aforesaid, of my estate. I give my wife the privilege of having my negro man, Jerry, valued by two disinterested persons in a reasonable time after my death, and taking him at such valuation, as a part of her share; but this is a privilege merely, which she may exercise or decline, at her op-

tion; and, should she decline to take him, he is to be sold as the other negroes as a part of my estate.

Item seventh. I have heretofore given and entered into a guarantee for my son Arthur M. Hopkins, in favor of David Porter Bibb, and others, for anything, if any, he may owe them, after deducting from their shares of the said notes the balance due from them to him for his salary. I have also lent to my said son several accommodation bills drawn by myself and accepted by his mercantile house, and he may wish after my death to give new bills in renewal of those then existing, so as to get farther time, in which event I authorize my execu-
72 tors to draw from time in their representative character, other bills in renewal of those then existing, which bills, so to be drawn, shall be as binding on my estate as if they had been drawn by myself. If there be any accommodation endorsement which I have made for my said son, I authorize my said executors to renew the same also. On account of the guaranty aforesaid, and nearly the whole of the said accommodation bills, I have some security and indemnity upon real estate and other property of my said son, but should my executors be obliged to pay on said guaranty or said accommodation bills, or others given in renewal of them, more than the securities I hold for my indemnity will pay, then the excess of payment so made more than what the securities he has given will yield, shall be deducted from the share hereby given to my said son, and if such excess shall be as great or greater than such share, then he shall not be entitled to any part of my estate under this will, except the specific articles bequeathed to him.

Item 8th. All the furniture in my wife's chamber, the parlor carpets, a new set of dinner china, half a dozen silver tablespoons and two salt spoons, and a silver ladle are my wife's property, and she is to have them. All the silver plate which I owned during the life of my first wife, except as hereinafter excepted, I have given and divided among my five daughters to be removed by them from my residence
73 during this month. The silver plate not included in the last-mentioned gift consists of three dozen silver forks, two silver butter-knives, one pickle knife and fork, one fish-knife, one pie-knife, *six salts* and six salt spoons, one silver ladle and two branch candlesticks. Of these excepted articles as aforesaid, I give and bequeath the said silver forks to be equally divided between my two sons Arthur M. and William Leigh, and the other of said articles I give to my daughters Augusta H. and Kate Erskine, to be equally divided between them. All the other furniture in the two parlors, not hereinbefore mentioned, including the pictures; all the furniture in the chamber over the front parlor; all the furniture in the dining-room, except the pictures, and all the china, except the punch bowl, I give and bequeath to my wife. The bowl aforesaid I give to my daughter, Maria Walker. The glass-ware I give to my wife, except the glass dishes, which I give to my daughter, Maria. All the remainder of my household furniture I direct my executors to sell. My library, with the exception of such books as belong to my wife, to be pointed out by her, I give to be equally divided among my seven living children.

Item ninth. To my son, Arthur M., I give my cane of Zebra
74 wood with a gold head, an old pair of family pocket-pistols, my portrait by Bush, and a picture of a Swiss cottage; and to my son, William Leigh, my gold watch, my smallest cane with a gold head, my miniature likeness by Dodge, and a large cane given to me last year by Col. William Townes of Virginia. To my son-in-law, John J. Walker

I give my Derringer pistols; and to my friend, William G. Jones, my Colt's pistol, a revolver with four barrels. To William Leigh I give also my Smyrna sword, and an old desk I have owned since 1815.

Item tenth. All the property to which either of my five daughters shall be entitled under and in virtue of this will, shall be for the sole and separate use of such daughter, and the legacy to which my son Arthur M. shall be entitled in virtue hereof, exclusive of the bequests aforesaid to him of specific articles, I give to him as a trustee for the support of his family and himself, consisting his wife and the children he now has or may have hereafter.

Item 11. Till my executors may sell

A. F. HOPKINS. [SEAL.]

any real estate in the city of Mobile, I will that they shall rent the same, and annually collect the same, and after paying insurance, taxes, and other charges upon the same, divide the net amount of the rents
75 annually between my wife and my other eight legatees mentioned in item fourth of this will in the same proportions that the proceeds of the sales authorized by said item must be divided according to said fourth section, and subject to such deductions as are directed therein.

Item 12th. Wherever in this will I have given power and discretion to my executors it is my meaning and will that such power and discretion may be exercised by either one of them, if only one of them should qualify as executor, or by the surviver of them, if one should die, as fully as might be done by both of them.

Item 13th. I nominate and appoint my son-in-law John J. Walker, and my friend William G. Jones, both of the city of Mobile, executors of this my last will and testament, and it is my will, and I hereby direct that they shall not, nor shall either of them be required to give any security on qualifying as executors or executor of this my will. In testimony whereof I have hereunto subscribed my name and affixed my seal this 12th day of May, in the year of our Lord one thousand eight hundred and fifty-nine. The word "one" being interlined in item second. The word "hundred" interlined in item fourth. The word "them" interlined in item fifth. The words "in renewal" interlined in item seventh, and the words "shall be deducted from the share hereby given to my said son" interlined also in item seventh, before signing
76 and sealing this my last will.

A. F. HOPKINS. [SEAL.]

The two foregoing sheets numbered 1 and 2, and each signed and sealed at the end thereof by A. F. Hopkins, together with this half sheet, were signed, subscribed, and published by the testator, Arthur F. Hopkins, as his last will and testament, in our presence and at his request, and in his presence and in the presence of each other, we have subscribed our names thereto as attesting witnesses this 12th day of May, 1859.

ROB'T H. SMITH,
HENRY C. SEMPLE,
ROBERT B. ARMISTEAD.

Codicil to the last will and testament of A. F. Hopkins, of the city of Mobile, State of Alabama, made and published by him in manner and form following, that it to say:

I have heretofore sent twelve thousand dollars in money belonging to my wife, Juliet A. Hopkins, as her sole and individual property, to

Messrs. Walker, Meade & Co., and the said sum is payable to me as trustee of my wife: Now, should they fail to pay the said debt and become unable to pay the same, I hereby charge my estate with the payment of the said debt and all interest which may accrue thereon, and direct my executors to pay the same before the distribution of any part
77 of my property shall be made among my legatees.

I hereby will and ordain that the legacy, if any, to which my son Arthur M. may become entitled under and by virtue of this will, testament and codicil, exclusive of the bequests aforesaid of specific articles, shall be a legacy to him as a trustee for the support of the children he now has or may have hereafter, and himself.

To my son-in-law, Henry A. Lowe I give my smallest cane, with a gold head; and to my son-in-law William Barnewall, a large sword-cane given to me in 1859 by Col. W. Townes, of Virginia.

In testimony whereof I have hereunto subscribed my name and affixed my seal this 18th day of May, 1861.

A. F. HOPKINS.

Signed, subscribed, and sealed, and published by the testator, A. F. Hopkins, as a codicil to his last will and testament, in our presence and at his request; in his presence, and in the presence of each other, we have subscribed our names thereto as attesting witnesses, this 18th day of May, 1861.

W. J. HARDEE.
LEVI W. LAWLER.
W. H. ANDERSON.

78 State of Alabama, Mobile County, probate court.

IN THE MATTER OF THE PROBATE OF THE LAST will and testament of Arthur F. Hopkins, deceased.

Before me, George W. Bond, judge of the said court, personally appeared in open court, Robert H. Smith, who having been by me first duly sworn and examined, did and does depose and say, on oath, that he is a subscribing witness to the instrument of writing now shown to him. dated the 12th day of May, 1859, and which purports to be the last will and testament of Arthur F. Hopkins, deceased, late an inhabitant of this county; that said Hopkins, since deceased, signed and executed said instrument on the day the same bears date, and declared the same to be his last will and testament, and that affiant set his signature thereto on the day the same bears date, as subscribing witness to the same, in the presence of said testator; that said testator was of sound mind and disposing memory, and in the opinion of deponent fully capable of making his will at the time the same was so made as aforesaid. Affiant further states that said testator was, on the day of the said date of said will, of the full age of twenty-one years and upwards.

Affiant further states that Henry C. Semple, who is also a subscribing witness to said will, is a resident of Montgomery County, in this
79 State, and that Robert B. Armistead, who was also a subscribing witness to said will, has departed this life since the execution thereof.

ROB'T H. SMITH.

Subscribed and sworn to before me this 2nd day of February, A. D. 1866.

GEO. W. BOND, *Judge.*

State of Alabama, Mobile County, probate court.

IN THE MATTER OF THE PROBATE OF THE LAST will and testament of Arthur F. Hopkins, deceased.

Before me, George W. Bond, judge of the said court, personally appeared in open court William H. Anderson, who, having been by me first duly sworn and examined, did and does depose and say on oath, that he is a subscribing witness to the instrument of writing now shown to him, dated the 18th day of May, 1861, and which purports to be a codicil to the last will and testament of Arthur F. Hopkins, deceased, late an inhabitant of this county; that said Hopkins, since deceased, signed and executed said instrument on the day the same bears date, and declared the same to be a codicil to his last will and testament, and that affiant set his signature thereto on the day the same bears date,
80 as subscribing witness to the same, in the presence of said testator; that said testator was of sound mind and disposing memory, and, in the opinion of deponent, fully capable of making said codicil at the time the same was so made, as aforesaid.

Affiant further states that William J. Hardee, and Levi W. Lawler are also subscribing witnesses to said codicil; that said Hardee is a resident of Marengo County, and that said Lawler is a resident of Talladega County, in this State.

W'M H. ANDERSON.

Subscribed and sworn to before me this 2nd Feb., A. D. 1866.

GEO. W. BOND, *Judge.*

STATE OF ALABAMA, *Mobile County:*

I, George W. Bond, judge of the court of probate in and for said county and State, do hereby certify that the within instruments of writing have this day, in said court, and before me as the judge thereof, been duly proven by the proper testimony to be the genuine last will and testament, and codicil thereto, of Arthur F. Hopkins, deceased, and that said will and said codicil, together with said proof thereof, has been recorded in my office, in Book of Wills, No. 3, at pages 467, 468, 469, 470, 471, 472, 473, 474, & 475.

81 In testimony of all which I have hereunto set my hand and the seal of the said court this second day of Febr[illegible]ry, A. D. 1869.

[SEAL.] GEO. W. BOND.

Pet. for letter.

STATE OF ALABAMA, *Mobile County:*

To the Hon. Geo. W. Bond, judge of the probate court of said county:

The petition of John J. Walker and William G. Jones, respectfully shows unto your honor that they were duly nominated and appointed in and by the last will and testament of Arthur F. Hopkins, deceased, which will has been heretofore duly proved and admitted to record in this honorable court, to be executors thereof. For the names, ages, residences, and conditions of the next of kin of said testator, your petitioners beg leave to refer to the statement contained in the petition which was filed in this court for the probate of said will. Your petitioners further state that they are each over twenty-one years of age, and inhabitants of this State.

Wherefore your petitioners pray that they may be confirmed by the order and decree of this court in their said nomination and appointment by said testator, as executors of said will. In making such order
82 and decree, your petitioners pray your honor to inspect the terms and requirements of said will, inasmuch as they are advised and believe that they are thereby exempted from giving bond and security as such executors thereof. And your petitioners will ever pray, &c.

JOHN J. WALKER.
W'M G. JONES.

Subscribed & sworn to this Feb'y 6, 1866.

GEO. W. BOND, *Judge.*

Grant of letters.

State of Alabama, Mobile County, probate court.

FEB'Y 6TH, 1866.

ARTHUR F. HOPKINS, DECEASED. ESTATE OF. }
Grant of letters testamentary. }

Upon the application of John J. Walker and William G. Jones, who are named as executors of the last will and testament of said decedent, this day made in writing and under oath, it is ordered that letters testamentary upon the will of said decedent be granted to them, and that said letters issue to them forthwith, without bond or security being required, in accordance with the provisions of said will.

It is further ordered that Augustus Brooks, Balthazar Tardy, and Augustus R. Meslier be appointed and authorized to appraise said estate, and that said application be filed and recorded.

And the court adjourned.

83 State of Alabama, Mobile County, probate court.

Whereas the last will and testament of Arthur F. Hopkins, was duly proved at a probate court held for said county at the court-house in the city of Mobile, on the second day of February, 1866, in which will he appointed John J. Walker and William G. Jones, executors thereof, and by an express provision in said will to that effect, exempted them from giving bond as such executors, and said John J. Walker and William G. Jones, having taken the oath required by law:

Therefore, that the will of said testator may be well and truly performed, we, by these presents, grant and commit to said John J. Walker and William G. Jones, the administration of all and singular the goods and chattles, rights and credits, whatsoever, belonging to said Arthur F. Hopkins at the time of his death, according to the true intent and meaning of the said will, hereby requiring said John J. Walker and William G. Jones to file in the office of said court, within two months from this date, a true and full inventory of said goods and chattels, rights and credits, and to render a full and true account of their administration whenever thereto legally required.

Witness Geo. W. Bond, judge of said probate court, at office, this sixth day of February, eighteen hundred and sixty-six.

Test: GEO. W. BOND, *Judge.*

84 Issued 6th day of Feb'y, 1866.

State of Alabama, Mobile County, probate court.

FEBRUARY 6TH, 1867.

To the Hon. George W. Bond, judge of the probate court of Mobile County:

I, William G. Jones, one of the executors named in the last will and testament of Arthur F. Hopkins, deceased, admitted and qualified as one of such executors by this court on the sixth day of February, 1866, do hereby resign and renounce the said office and appointment, and do therefore state and show to your honors, that, as such executor, I have never received or had in my possession any money or property of the estate of the said testator, nor paid out any money or property of said estate, so that I have no account to render or file herewith, and I pray that this resignation may be received, allowed, and recorded, and all proper orders made thereon, &c.

W'M G. JONES.

Subscribed and sworn to before me this 6th day of February, 1867.
GEO. W. BOND, *Judge.*

85 State of Alabama, Mobile County, probate court.

FEB'Y 6TH, 1867.

Arthur F. Hopkins, deceased, est. of.—Resignation of William G. Jones, one of the executors.

This day came William G. Jones, one of the executors in this court of the last will and testament of said Arthur F. Hopkins, deceased, and presented his resignation as such executor, in writing, and under oath. It is ordered that said resignation be received and filed, and that the same be entered upon the minutes of this court, and which is accordingly so done, to wit:

"State of Alabama, Mobile County, probate court.

"FEBRUARY 6TH, 1867.

"To the Hon. Geo. W. Bond, judge of the probate court of Mobile County:

"I, William G. Jones, one of the executors named in the last will and testament of Arthur F. Hopkins, deceased, admitted and qualified as one of such executors by this court, on the 6th day of February, 1866, do hereby renounce and resign the said office and appointment; and do thereupon state and show to your honor, that, as such executor, I have never received or had in my possession any money or property of the estate of the said testator, nor paid out any money or property of
86 said estate, so that I have no account to render on file herewith, and I pray that this resignation may be received, allowed, and recorded, and all proper orders made thereon, &c.

"W'M G. JONES.

"Subscribed and sworn to before me this 6th day of February, 1867.
"GEO. W. BOND, *Judge.*"

Filed Feb. 6th, 1867. Bond, judge.

State of Alabama, Mobile County, probate court.

I, Gustavus Horton, judge and ex-officio clerk of the probate court in and for said county and State, do hereby certify that the annexed is a full, true, and correct copy of the last will and testament, and the codicil thereto, of Arthur F. Hopkins, deceased, and the proceedings of the court thereon; also of the resignation of William G. Jones, one of the executors in this court of said last will and testament, and the order of this court thereon; that the judge of said court is by law made the only clerk thereof, and that this attestation is in due form of law.

In testimony of all which I have hereunto set my hand and affixed the seal of said court this fifteenth day of April, A. D. 1869.

[COURT SEAL.] G. HORTON, *Judge.*

[$1 00 stamp, State of Alabama, tax on seals, cancelled]

(Endorsed :) Filed April 19, 1869. W'm A. Bradley, cl'k.

87 On this day, to wit, 27th day of April, A. D. 1869, came said defendant Derby, by his solicitors, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of defendant Derby.

In chancery.

In the circuit court of the United for the northern district of Illinois, in chancery.

The answer of William M. Derby, defendant, to the bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnwell, Mary M. Barnwell, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, complainants.

88 This defendant now, and at all times hereafter, saving and reserving to himself all benefit and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such part or parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering, saith:

That he admits that heretofore, and on or about the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, the complainants, John J. Walker, John J. Walker, executor of the last will and testament of Arthur F. Hopkins, deceased, and Maria Walker aforesaid, were owners in fee simple, and that the complainants, Cornelia C. Lowe, wife of Henry A. Lowe aforesaid, and Mary M. Barnewall, wife of William Barnewall aforesaid, and Kate E. Oliver, wife of Starke H. Oliver aforesaid, and Augusta H. Rice, Juliet A. Hopkins, and William L. Hopkins aforesaid, as legatees under and by virtue of the said last will and testament, were interested in the following described land and real estate situate in the city of Chicago, in the county of Cook, and State of Illinois; that is to say, an equal undivided half part of the first following described tract of land known as that part of

the northeast quarter of section four, township thirty-eight, north of range fourteen east of the third principal meridian, bounded and described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad seventy-four rods to the north line of said quarter section; thence east on said line to the place of beginning. Also the whole of the following-described pieces or parcels of land: The east half of block numbered one, (1,) and the east of block numbered six, (6;) the whole of blocks numbered five (5) and four, (4,) and lots numbered one, (1,) two, (2,) twenty-three, (23,) and twenty-four (24) in block numbered twelve, (12;) all in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section numbered three, (3,) in township and range aforesaid, which lands were subject to certain rights and privileges then enjoyed by the Union Stock Yards and Transit Company.

And this defendant, further answering, saith that he is informed, and upon his said information and belief admits, that afterwards, on said day, which is to say, the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, at Chicago aforesaid, complainants, by and through the complainant, John J. Walker, as agent and as executor aforesaid, on their behalf and for himself, employed Samuel H. Kerfoot and J. Ford Pierson, who then and there
89 were doing business as real estate agents and loan brokers, under the firm, name, and style of S. H. Kerfoot & Co., to sell said real estate for said complainants; but this defendant has no knowledge or information, only as advised by the said complainants' said bill of complaint, whether to that end or for any other the said John J. Walker, as agent and executor aforesaid, agreed to pay said S. H. Kerfoot & Co. for their services and commission in that behalf five per cent., or any other sum or sums whatever, of and on the first three thousand dollars, and two and a half per cent., or any other sum or sums whatever on the balance of the purchase money to be had for said real estate on sale thereof through said S. H. Kerfoot & Co., or any or either of the members of said firm; wherefore this defendant cannot either admit or deny the said complainants' said bill of complaint in that respect.

And this defendant further says that he has no knowledge or information, only as advised by said complainants' said bill of complaint, whether the said S. H. Kerfoot & Co., or either of the members of said firm, upon any consideration whatever, undertook and agreed to and with the said complainants or any or either of them, to serve the said complainants or either of them, faithfully and to the best of their ability in making sale of said real estate; but this defendant doth say of his own knowledge, that so far as the said S. H. Kerfoot & Co. were concerned in making sale of said real estate for and as the agents of said complainants, they did honestly, faithfully, and to the best of their ability serve the said complainants.

And this defendant, further answering, denies that in breach of the trust or any trust in them reposed by the said complainants or any one or either of them, the said S. H. Kerfoot & Co., or either of the members of said firm, contrary to their duty or to equity and good conscience in that behalf, secretly or covertly combined or confederated in any manner or way with this defendant. And this defendant denies that he secretly or covertly or in any manner or way united, combined, or confederated with the said S. H. Kerfoot & Co., or either of the members

of said firm, or that on or about the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, at the city of Chicago, or at any other time or place whatever, this defendant took any undue advantage or any advantage whatever of the relations of trust or confidence, or of any relation whatever that then or ever existed between the said S. H. Kerfoot & Co., or either of the members of said firm, and the complainants, or any or either of them in the premises.

And further, this defendant denies that he agreed to become, or that he ever did in any manner or way become, or agree to become with the said S. H. Kerfoot & Co., or either of the members of said firm, or any other person or persons whatever, purchaser or joint owner of said real estate or any part thereof at a price far below its then cash value, or at any price whatever.

And this defendant further denies that, to that end or any other end or purpose whatever, this defendant, on the said day or year, or at any other time, united, confederated, or combined with the said S. H. Kerfoot & Co., or either of the members of said firm, or with any one else, for the purpose of effecting or concealing his purchase of said premises from said complainants or any of them, or that this defendant in any manner or way arranged or agreed with said S. H. Kerfoot & Co., or any of the members of said firm, to hold out to said complainants, or any of them, that this defendant was the sole purchaser of said premises at the sum of twenty-five thousand six hundred dollars, or at any other price, but this defendant avers the fact to be that he was the sole and only purchaser of said premises at the said price.

And further, this defendant denies that, pursuant to any false
90 or fraudulent arrangement, agreement, combination, or confederacy between this defendant and S. H. Kerfoot & Co., or either of the members of the said firm, they, the said S. H. Kerfoot & Co., or either of the members of said firm, held out or could have held out to the said complainants, or any of them, that this defendant was the sole purchaser of said premises, at the price aforesaid, with a view to deceive or defraud the said complainants, as stated and charged in their said bill of complaint, because this defendant avers the fact to be that he was the sole purchaser thereof, without any combination or confederacy with the said S. H. Kerfoot & Co., or either of the members of said firm, or any one else.

And further, this defendant denies that, on or about the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, or at any other time, this defendant procured from said complainant, John J. Walker, executor, aforesaid, a deed of all said real estate to this defendant, as of date the sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven; on the contrary thereof, this defendant doth say and state the fact to be, that on or about the 3rd day of March, in the year of our Lord one thousand eight hundred and sixty-seven, Samuel H. Kerfoot, one of the members of said firm of S. H. Kerfoot & Co., informed and advised this defendant that they, the said S. H. Kerfoot & Co., had the land in said bill and hereinbefore described, for sale at their office at the price or sum of one thousand dollars per acre, cash; and then and there requested this defendant to purchase the same at that price, which to do this defendant then and there refused, but then and there stated to the said Samuel H. Kerfoot that this defendant would purchase the said real estate for cash, and pay therefor such price as in his judgment it was worth; whereupon the said Samuel H. Kerfoot requested this defendant to make a cash offer for the said land, which to do this defendant also

refused, and then and there stated to the said Samuel H. Kerfoot that he, this defendant, would not pay cash for said premises, or any other premises, unless he could purchase at a good bargain; and thereupon the said Samuel H. Kerfoot stated and told this defendant that John J. Walker, complainant as aforesaid, part owner and agent of the owners of said premises, was then in the city of Chicago for the purpose of selling said land and real estate, and then and there requested this defendant to go with him, the said Samuel H. Kerfoot, and talk with the said John J. Walker personally in regard thereto, which to do this defendant assented, and then and there did go and did see the said John J. Walker at the office of said S. H. Kerfoot & Co., in Chicago, aforesaid; at which time and place the said John J. Walker stated and told this defendant that he, the said John J. Walker, as owner and agent of the owners of said premises, had come to the city of Chicago for the express purpose of selling the said premises, and then and there requested this defendant to make a cash offer therefor, which to do, however, this defendant declined until such time as this defendant could go upon the land, look it over, and advise himself as to its value; and this defendant further says that, after so meeting and talking with the said John J. Walker, this defendant did go upon the said land and carefully looked it over, and advised himself in regard to its value as well as he then could, and subsequently, on or about the sixth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, after so examining the said premises, and advising himself in regard to the value thereof, this defendant again met the said John J. Walker, at the said office of S. H. Kerfoot & Co., in the city of Chicago, aforesaid, and then and there offered to purchase the said premises of and from the said John J. Walker, and of and from the other owners thereof, and parties interested therein, and to pay therefor the sum of twenty-five
91 thousand and six hundred dollars in payments as follows, which is to say, one quarter cash, and the balance in three equal annual instalments, to become due in one, two, and three years respectively, with interest at six per cent.; which offer the said John J. Walker then and there refused to accept, but then and there proposed and offered to sell the said lands and premises to this defendant at and for the said price or sum of twenty-five thousand six hundred dollars, to be paid—eight thousand two hundred dollars cash in hand, and the balance in three equal annual payments, to become due in one, two, and three years, with interest at six per cent. per annum, which said offer of the said John J. Walker this defendant then and there accepted; and thereupon at the instance and request of the said John J. Walker, and as evidence of the said bargain and sale, an agreement in writing was made and entered into between the said John J. Walker and this defendant, wherein and whereby it was, among other things, acknowledged and agreed that, for value received, John J. Walker, of Mobile, Alabama, as executor of the estate of Arthur F. Hopkins, deceased, thereby agreed to sell to this defendant, who, for value received, agreed to buy of said Walker, as such executor, the property of said estate lying in sections three and four, township thirty-eight, north of range fourteen, east of the third principal meridian, being the east half of block one and six, and the whole of block four and five, and lots one and two, twenty-three and twenty-four of block 12, all in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section three of said township and range; and also an undivided one-half of twenty acres, owned jointly by said estate and one Akerly, lying on the northeast corner of said section four, township and range aforesaid, the price of said prop-

erty being twenty-five thousand six hundred dollars, payable—eight thousand two hundred dollars on delivery of a good and sufficient deed, conveying said premises to this defendant, free and clear of all incumbrances, and the balance in three equal annual instalments, with interest at six per cent. per annum from the date thereof, the notes for said deferred payments to be secured by mortgage of this defendant, with power of sale therein contained, duly executed, and conveying the same premises thereby sold, all the papers to be dated even with the said agreement, as by the said agreement under the hands and seals of the said John J. Walker, as executor aforesaid, and this defendant, now in the custody and power of this defendant, ready to be produced when and where this honorable court may direct, reference thereunto being had, will more fully appear; which agreement, after the making and execution thereof, was by the agreement and with the consent of the said John J. Walker, and this defendant, delivered to the said Samuel H. Kerfoot, to be by him held in escrow until the deed therein mentioned should be made and delivered to this defendant, and the title to said real estate should be examined.

And this defendant further says, and states the fact to be, that soon after the making and delivery of said agreement in escrow as aforesaid, the said John J. Walker furnished to this defendant an abstract of title to said real estate, to be examined by this defendant, which abstract of title this defendant submitted to his attorney, Henry S. Monroe, esquire, for examination, and who, after examination thereof, advised this defendant that the title to said real estate, as appeared by said abstract, was good in said John J. Walker and the other owners thereof, with the exception of a defect in the probate of the will of the said Arthur F. Hopkins, deceased, and being so advised, this defendant stated and told the said John J. Walker of the defect and objection raised by his said attorney to the title to said real estate; whereupon the said John J. Walker, to remove the said objection, and the better to perfect the title to said premises, in accordance with the said agreement, proposed
92 to this defendant, that if this defendant would pay to him, the said John J. Walker, the said sum of eight thousand and two hundred dollars in cash, and make, execute, and deliver to said S. H. Kerfoot and Co., six notes for the deferred payments, payable to said John J. Walker, executor, and also make deeds of trust to said real estate, securing the same, to be by said S. H. Kerfoot & Co. held until the said John J. Walker should procure and deliver to this defendant a quitclaim deed to said premises from all the others, owners thereof, that the said John J. Walker would then and there make and deliver to this defendant a good and sufficient deed for said premises, so far as it was possible for him so to do, and would also procure and deliver to this defendant as soon as possible thereafter, a quitclaim deed to the said premises from all the other parties interested therein, and that when he so procured and delivered such quitclaim deed he should be entitled to receive the said notes and deeds of trust; which proposition this defendant then and there assented to, and then and there, in accordance therewith, paid to the said John J. Walker the said sum of eight thousand two hundred dollars, and then and there made and delivered to the said S. H. Kerfoot & Co., as escrows, aforesaid, six several promissory notes, amounting in the aggregate to the sum of seventeen thousand four hundred dollars, ($17,400;) three of said notes bearing date the 16 day of March, in the year of our Lord one thousand eight hundred and sixty-seven, each for the sum of eighteen hundred and twelve dollars and fifty cents, due respectively on or before the 16th day of

March, in the years 1868, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, with interest at six per cent. per annum, payable at the office of S. H. Kerfoot & Co., which three notes were secured by deed of trust bearing date the 16th day of March, in the year of our Lord one thousand eight hundred and sixty-seven, conveying to Henry S. Monroe, esquire, the land hereinbefore described, situate in section four aforesaid, and the other three of said promissory notes bearing date the sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, each for the sum of three thousand nine hundred and eighty-seven dollars and fifty cents, payable respectively on or before the 16th day of March, in the years one thousand eight hundred and sixty-eight, and one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, with interest at the rate of six per cent. per annum, payable at the office of said S. H. Kerfoot & Co., secured by deed of trust bearing date the 16th day of March, one thousand eight hundred and sixty-seven; also conveying to said Henry S. Monroe, esquire, the rest of said land hereinbefore described, as by the said notes, now in the custody of this defendant, and the said deeds of trust in the custody or power of said complainants, or some or one of them, reference being thereto had when produced, and the production whereof this defendant craves, will more fully and at large appear. In consideration whereof this defendant then and there, on the day of March, in the year of our Lord one thousand eight hundred and sixty-seven, received of and from the said John J. Walker a deed for said premises.

And this defendant says and states the fact to be that this defendant made the said purchase in good faith solely and alone of and from the said John J. Walker, as hereinbefore set forth, and paid for the said premises all the same were, in his judgment, then reasonably worth; and that neither before or at the time of making of said agreement, or at the time of the making and delivery of the said notes and deeds of trust and the said deed from the said John J. Walker to this defendant, or at any other time before, were the said S. H. Kerfoot & Co., or the
93 said S. H. Kerfoot, or the said J. Ford Pierson, or either of them, in any manner or way whatever interested with this defendant in the said premises, or any part thereof, or in making the said purchase, or in regard thereto; and further, that this defendant neither counselled or advised with the said S. H. Kerfoot & Co., or either of the members of said firm, in any manner or way in regard thereto.

And this defendant, further answering, says it is true that said complainant, John J. Walker, as executor aforesaid, executed said deed to this defendant, and received of this defendant the said sum of eight thousand and two hundred dollars, cash; and that this defendant thereupon executed and delivered to said S. H. Kerfoot & Co. his three certain promisory notes in writing, payable to the order of said John J. Walker, executor aforesaid, each for eighteen hundred and twelve dollars and fifty cents, due respectively on or before the 16th days of March, in the years of our Lord one thousand eight hundred and sixty-eight, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, with interest at six per cent. per annum, at the office of S. H. Kerfoot & Co.; and to secure the same further by deed of trust, bearing date on or about the 16th day of March, in the year of our Lord one thousand eight hundred and sixty-seven, conveyed the tract of land hereinbefore and in said complainant's said bill of complaint described, situate in section four, to Henry S. Monroe, esquire, which deed is recorded in book 379 of deeds, page 468, in the recorder's office of Cook

County; and also executed and delivered his said three certain other promissory notes, payable as aforesaid, each for the sum of three thousand nine hundred and eighty-seven dollars and fifty cents, due, respectively, on or before the 16th days of March, in the years of our Lord one thousand eight hundred and sixty-eight, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, at the office of S. H. Kerfoot & Co., with interest at six per cent. per annum; and, to secure the same, conveyed the rest of said lands by deed of trust, bearing date the sixteenth day of March one thousand eight hundred and sixty-seven, to said Henry S. Monroe, esquire, which deed is recorded in the office of the recorder of deeds of the said county of Cook, in book 380 at page 372. But this defendant denies that the said deed from said John J. Walker to this defendant, and that the said notes or deeds of trust were made or delivered as by the said complainants in their said bill of complaint in that respect stated and charged. On the contrary thereof this defendant doth say and state the fact to be that each, all, and every of the said deeds and notes were made, executed, and delivered as hereinbefore in that behalf set forth.

And this defendant denies that this defendant afterwards, or at any time, ever caused to be prepared, or did prepare, a quitclaim deed, or any quitclaim, or any deed to be executed by the said complainants, or any or either of them, or by the said John J. Walker, purporting to convey or conveying to this defendant their respective interests, or any interests whatever, in said real estate, or any part thereof, or directed the said S. H. Kerfoot & Co. to retain the said notes and trust deeds until the said complainants should execute and deliver said quitclaim deed to this defendant, as by the said complainants in their said bill of complaint in that respect have stated and charged. On the contrary thereof, this defendant doth say, and state the fact to be, that the said quitclaim deed was caused and procured to be prepared by the said complainant John J. Walker, as hereinbefore set forth, and that the said notes and deeds of trust were placed in the hands of said S. H. Kerfoot & Co. at the instance and request of said John J. Walker,
94 as herein also set forth, and not otherwise or different.

And this defendant, further answering, says he has no knowledge, notice, or information, save as he is advised by said complainants in their said bill of complaint, and therefore can neither admit nor deny, whether on the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, or at any other time, the said complainant paid the said S. H. Kerfoot & Co. the sum of seven hundred and fifteen dollars or any other sums commissions for selling said real estate to this defendant.

And this defendant, further answering, denies that, on the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, or at any other time, before or since, this defendant received of S. H. Kerfoot & Co., or either of the members of said firm, one-half or any other part or portion of the commissions, if any, which the said John J. Walker paid to the said S. H. Kerfoot & Co., or either of the members of said firm, as by the said complainants in their said bill of complaint have stated and charged.

And this defendant, further answering, denies that this defendant and the said S. H. Kerfoot & Co., namely the said Samuel H. Kerfoot and J. Ford Pierson, to further complete said joint purchase or share, or own the said real estate, or to express the understanding or agreement by them secretly, corruptly, or covertly made, under date of March nineteenth, one thousand eight hundred and sixty-seven, or at any other

time, executed or interchangably delivered to each other the agreement or writing particularly set forth in said complainant's said bill of complaint. On the contrary thereof, this defendant says and states the facts to be in regard to the making of said agreement between this defendant and said S. H. Kerfoot and J. Ford Pierson, that some considerable time subsequently to the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, and after this defendant had purchased and paid for said real estate as aforesaid, and during and before the time when the said John J. Walker delivered his said quitclaim deed, executed by the said other complainants to the said defendant, he, this defendant, in the interim between the date of said purchase and the time aforesaid, having offered the said real estate for sale through divers persons and in divers ways at the rate of one thousand dollars per acre, and being unable to effect a sale thereof at that price, stated to the said Samuel H. Kerfoot that they, the said S. H. Kerfoot & Co., were instrumental in his purchasing the said real estate, and that the same was not then worth the price which this defendant had paid therefor, and that this defendant had been endeavoring to make a sale thereof at the rate of one thousand dollars per acre upon credit, and was unable to make a sale thereof, or any part thereof, at that price, and upon those terms; whereupon the said Samuel H. Kerfoot, stated to this defendant, that they, the said S. H. Kerfoot & Co., would purchase one-half of the said premises at the rate and upon the terms that this defendant purchased the same from said John J. Walker; and this defendant then verily believing that he had paid the full and extreme value of said premises to said John J. Walker, and also believing that the said premises were not then worth more than this defendant had so paid therefor; this defendant then stated and told the said S. H. Kerfoot, that he, this defendant, would sell the said firm of S. H. Kerfoot & Co., an undivided one-half interest in said real estate at the price and on the terms which this defendant had purchased the same of said John J. Walker, provided the said S. H. Kerfoot & Co., would, in addition thereto, pay this defendant the sum of three hundred and seventy-five dollars, or
95 an amount equal to one-half the commissions which the said S. H. Kerfoot & Co. ought to have received from the said John J. Walker for assisting him in making sale of said premises, which to do the said S. H. Kerfoot then and there agreed, and thereupon the said Samuel H. Kerfoot, as this defendant believes, in his own proper handwriting, prepared the original of said agreement in the said bill of complaint set out, and ante-dated the same to March nineteenth, one thousand eight hundred and sixty-seven, with a view to entitle this defendant to interest on the amount which this defendant had paid from the time of such payment, and not as in said complainants' said bill of complaint stated and charged, secretly and corruptly, or covertly, with a view to cover up or hide any misconduct on the part of S. H. Kerfoot & Co., or either of them and this defendant, as in and by said complainants in their said bill of complaint most unjustly alleged.

And this defendant, further answering, says that he has no knowledge, notice, or information, except as stated in said bill of complaint, whether on or about the first day of May, in the year of our Lord one thousand eight hundred and sixty-seven, the said John J. Walker requested the said other complainants to sign and execute the said quitclaim deed; but this defendant presumes, from the fact that the said John J. Walker had, as hereinbefore set forth, promised and agreed to procure the execution of the said quitclaim deed, and from the further

fact that they did execute said deed, that they were requested so to do by the said John J. Walker, and therefore admits that they were so requested; but this defendant denies that the said complainants were in any manner or way deceived or ignorant of their rights in the premises.

And the defendant admits that, on or about the thirtieth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, after the execution thereof aforesaid, the said John J. Walker delivered the said quitclaim deed to this defendant, and then and there received from the said S. H. Kerfoot & Co. the said notes and deeds of trust.

And this defendant, further answering, says it is true that, on or about the first day of June, in the year of our Lord one thousand eight hundred and sixty-seven, this defendant paid the said sums of money secured by his said notes and deeds of trust to and for the use of said complainants, and that thereupon complainants surrendered and delivered up to this defendant the said notes; but this defendant denies that, in so doing, he perpetrated any fraud or wrong upon the said complainants, or in any manner or way deceived or intended to deceive them in the premises, as by the said complainants, in their said bill of complaint, in that respect alleged.

And this defendant, further answering, denies that the said sum of twenty-five thousand and six hundred dollars was a grossly inadequate price for said lands at the time of the sale thereof to this defendant. On the contrary thereof, this defendant avers and states the fact to be, that the said sum of twenty-five thousand six hundred dollars, at the time of the sale of said lands to this defendant, as aforesaid, was a full and fair price therefor. And this defendant denies that he well knew, or at all knew or understood, or had any knowledge, notice, or information that said S. H. Kerfoot & Co., as the agent of said complainants, had been offered better or so good a price therefor.

And this defendant, further answering, of his own personal knowledge, as to himself, and upon information and belief as to said Samuel H. Kerfoot, denies that at any time since the making of said agreement between said S. H. Kerfoot & Co. and this defendant, this defendant and said S. H. Kerfoot & Co., or either of them, resorted to various or any pretexts, shifts, excuses, assertions, or subterfuges of any
96 nature or kind, to conceal or cover up the interest of said S. H. Kerfoot & Co., under the hereinbefore-mentioned agreement.

And this defendant further answering, admits that the said agreement between this defendant and the said S. H. Kerfoot and J. Ford Pierson was recorded in the office of the recorder of Cook County, Illinois, book 404, page 492, but this defendant does not know, and has no knowledge, notice, or information, except as advised by said complainants' bill of complaint, when, or at what time the existence of said agreement, or the recording thereof, as aforesaid, came to the knowledge of said complainants.

And this defendant, further answering, admits that, on or about the fifth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, the said Samuel H. Kerfoot and J. Ford Pierson, by quitclaim deed of that date, transferred and conveyed their interest in said real estate to this defendant, for a good and valuable consideration, as they well and lawfully might, which deed is recorded in the recorder's office of Cook County, in book 472, page 393.

And this defendant, further answering, denies that, of the said real estate purchased of the said complainants, this defendant is now in possession or the owner of the east half of block one, the west half of block five, or lots one and two aforesaid; but this defendant admits that he is

in possession and the owner of lots twenty-three and twenty-four, in block twelve, in Pryor and Hopkins' subdivision aforesaid, but not of any other part or portion thereof.

And this defendant, further says he has no knowledge, notice, or information, and does not know, except as advised by the said complainants' said bill of complaint, whether said complainants are informed or believe that this defendant is about to dispose or convert the said premises into cash, claiming it as his own property. This defendant doth say, however, and state the fact to be, that having honestly and fairly purchased and paid for the said premises as hereinbefore set forth, he does claim and believe himself to be the owner thereof so far as not already disposed of.

And this defendant, further answering, denies that of said lands this defendant, on or about the ninth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, by deed of that date, sold or conveyed to one Alonzo Rawson the said tract situate in section four, the east half of block six, and the east half of block five, for the sum of eighty-six thousand dollars. On the contrary thereof, this defendant saith and states the fact to be, that on the said day and year, this defendant did sell to said Rawson the whole of block six, the east half of block five, and the said tract in section four, for the sum of eighty-six thousand dollars; but this defendant further says that the west half of block six aforesaid was not contained in, nor any part of the purchase by this defendant, made from said John J. Walker, and that said west half of said block six at the time of said sale, was greatly more valuable than the east half of said block six.

And this defendant, further answering, denies that, on or about the first day of August, in the year of our Lord one thousand eight hundred and sixty-eight, this defendant, by deed of that date, sold or conveyed of said real estate, block four, to one Samuel Wing, and received therefor thirty thousand dollars. But this defendant doth say and state the fact to be, that he sold the said land to said Wing for the price
97 or sum of twenty-eight thousand dollars, and that at the request of said Wing, the deed therefor from this defendant to said Wing, expressed the consideration as thirty thousand dollars, instead of twenty-eight thousand dollars, the real consideration, and that the expenses attending said sale paid by this defendant amounted to about one thousand dollars, leaving the real amount received by this defendant twenty-seven thousand dollars.

And this defendant, further answering, admits that he *he* holds proceeds and securities for said sales, and insists that the same are his own property, and also insists that the said securities and proceeds are not the property of said complainants, or any or either of them, or any other person or persons except this defendant. And this defendant denies that, in truth or in fact, he holds said securities or property, or any part or portion thereof, in trust for said complainants, or any or either of them, and submits that he should not be compelled to account therefor to said complainants, or to any other person or persons, or to yield or to deliver up the same or any part thereof to said complainants, or any or either of them, or to any other person or persons whomsoever, for the reason that, as herein set forth, he purchased and paid for the said real estate, with his own lawful money, and sold and disposed thereof, honestly, openly, and fairly, and not secretly, or covertly, as by the said complainants stated and charged.

And this defendant, further answering, admits that, on or about the twenty-fourth day of September, in the year of our Lord one thousand

eight hundred and sixty-eight, this defendant executed a mortgage on the west half of block five, aforesaid, to one Joseph B. Shepherd, to secure the sum of ten thousand dollars. But this defendant says, and states the fact to be, that he did not make or execute the said mortgage to secure any indebtedness of this defendant to said Joseph B. Shepherd. On the contray thereof, this defendant doth say, and state the fact to be, that being invested with the legal title to said real estate, as mortgagee, this defendant, at the instance and request of one Henry H. Honore, who is and was the real and equitable owner of the said premises, to secure two notes, of five thousand dollars each, made by said Henry H. Honore to said Shepherd, in part consideration for the purchase price of said premises, made and executed the said mortgage to the said Shepherd, who, having previously thereto sold the said premises to the said Honore, at the instance and request of said Honore, made the deed therefor to this defendant, to secure this defendant in the sum of eleven thousand dollars, which this defendant had, before that time, lent and advanced to said Honore.

And this defendant denies that he threatens, or ever did threaten, in any manner or way, to encumber the balance of said lands, or any part thereof, or to transfer or dispose of said lands, or any part thereof, or the securities or moneys received therefor, to prevent the said complainants, or any or either of them, from obtaining any equitable or other relief that they are or may be entitled to in the premises.

And this defendent, further answering, upon his information and belief, denies that the said S. H. Kerfoot & Co., or either of the members of said firm, were selected by the said John J. Walker as the agent or agents of said complainants for the reason that the said John J. Walker was a stranger in Chicago, or that all of the said complainants were non-residents, or had no knowledge of the said lands except what they derived from said S. H. Kerfoot & Co. On the contrary thereof, this defendant, upon his said information and belief, saith and states the fact to be, that the said John J. Walker, previous to making sale of said premises to this defendant, as aforesaid, had been, and was in the city of Chicago for several days, during which time the said John J. Walker had fully advised and informed himself, otherwise than through the said S. H. Kerfoot & Co., or either of the members of the
98 said firm, in respect to the value of said real estate, and then well knew that he could not sell the said premises to any other person than this defendant, at or for so high a price as he did sell to this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is, by the said bill charged without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of the said defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct. And having now fully answered, prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W'M M. DERBY, *Defendant.*

JOHN J. MCKINNON,
Solicitor for Defendant.
CORYDON BECKWITH, and
MONROE & MCKINNON,
of Counsel.

99 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

William M. Derby, having been duly sworn, says he is defendant, whose name is subscribed to the foregoing answer; that he has heard the said answer read, and knows the contents thereof; that the said answer is true of his own knowledge, except as to the matters and things therein stated and set forth on information and belief, and as to those matters and things he believes it to be true; and further saith not.

W'M M. DERBY.

Subscribed & sworn before me the 26th day of April, 1869.

L. PROUDFOOT,
U. S. Comm'r.

(Endorsed:) Filed April 27, 1869. W'm H. Bradley, clerk.

100 *Motion for injunction heard.*

On this day, to wit, the fourth day of May, A. D. 1869, in the record of the proceedings of said court in said entitled cause appears the following entry, to wit:

JOHN J. WALKER, JOHN J. WALKER, EXECUTOR, Maria Walker, et al.
vs.
WILLIAM M. DERBY. } Chancery.

Now come the parties, by their attorneys, and now comes on to be heard the motion of the complainants for an injunction against the defendant as prayed for in the amended bill of complaint herein, and, after hearing the arguments of counsel, the court takes the same under advisement.

Leave to amend bill.

On this day, to wit, the twenty-ninth day of July, A. D. 1869, in the record of the proceedings of said court in said entitled cause appears the following entry, to wit:

JOHN J. WALKER, JOHN J. WALKER, EXECUTOR, Maria Walker, et al.
vs.
WILLIAM M. DERBY. } Chancery.

101 On motion of the complainants, by their solicitors, Hill & Dale, leave is given them by the court to amend their bill.

On this day, to wit, the 10th day of August, A. D. 1869, came said complainants, by their solicitors, and filed in said clerk's office their amended bill in said entitled cause, which said amended bill, together with the exhibits thereto attached, is in the word and figures following, to wit:

102 *2nd amended bill.*

To the judges of the circuit court of the United States for the northern district of Illinois:

John J. Walker, John J. Walker, executor, Maria Walker, William

Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, William L. Hopkins, Starke H. Oliver, and Kate E. Oliver, each, every, and all of them of the city of Mobile, and citizens of the State of Alabama, and Juliet A. Hopkins, of the city of New York, and a citizen of the State of New York, complainants, by Hill & Dale, their solicitors, bring this their bill against William M. Derby, Samuel H. Kerfoot, J. Ford Pierson, Alonzo Rawson, Samuel Wing, Henry H. Honore, Brian Philpot, Henry E. Picket, Joseph B. Shepard, Henry S. Monroe, each, every, and all of them of the city of Chicago, and citizens of the State of Illinois, defendants.

And now come the said complainants, and, by leave of court first had and obtained, amend their bill of complaint herein, and thereupon say:

That heretofore, on or about the first day of March, A. D. 1867, complainants John J. Walker, John J. Walker, who then was, & still is, executor of the last will and testament of Arthur F. Hopkins, deceased—exemplification whereof and its probate, with letters testamentary thereon, hath heretofore been filed herein, and is made a part hereof—and Maria Walker, were owners of in fee simple, and that the complainants Cornelia C. Lowe, wife of complainant Henry A. Lowe, Mary M. Barnewall, wife of complainant William Barnewall, Kate E. Oliver, wife of complainant Starke H. Oliver, Augusta H. Rice, Juliet A. Hopkins, and William L. Hopkins, as legatees, under and by virtue of said last will and testament, were interested in the following described land and real estate, situate at the city of Chicago, in the county of Cook, and State of Illinois, to wit:

An equal undivided half part of the first following described tract of land, known as that part of the northeast quarter of section four, (4,) township thirty-eight (38) north, of range fourteen (14) east of third principal meridian, bounded and described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north, on the east line of said railroad, seventy-four (74) rods, to the north line of said quarter section; thence east, on said line, to the place of beginning.

Also, the whole of the following-described pieces or parcels of land, to wit: The east half of block numbered one, (1,) and the east half of block numbered six, (6,) the whole of blocks numbered five (5) and (4,) and lots numbered one, (1,) two, (2,) twenty-three, (23,) and twenty-
103 four, (24,) in block numbered twelve, (12,) all in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section numbered three, (3,) in township and range aforesaid.

Which said lands were, however, subject to certain rights and privileges then enjoyed by Union Stock Yard and Transit Company, as touching said premises.

That, although the legal title to all said real estate was in the said Arthur F. Hopkins at the time of his decease, yet, by virtue of the facts set forth in and of a declaration of trust executed by the said Hopkins in his lifetime, in the words and figures following, to wit:

"THE STATE OF ALABAMA, *Macon County:*

"Know all men by these presents that, whereas I, Arthur F. Hopkins, of the city of Mobile, State of Alabama, am the owner of certain real estate in the city of Chicago, State of Illinois, consisting of thirty-seven acres, more or less, which said real estate was conveyed to me in the year and date as appears in said conveyance, and for divers good and valuable considerations, as therein also appears: now, I do by

these presents, hereby acknowledge and declare that one-fourth of the said consideration or purchase money paid by me for said real estate, was the money and property of Maria Walker, of the city of Mobile, State of Alabama; and one-fourth, also, of the said consideration or purchase money, was the money of John J. Walker, of the city of Mobile, Alabama; and I do hereby acknowledge and declare that I have ever held, and do now hold, one-half of all my said real estate in the said city of Chicago, in trust for the said Maria Walker and John J. Walker, one-fourth of the same to each.

"In testimony whereof I have hereunto set my hand and seal this the 26th of July, A. D. 1865.

"ARTHUR F. HOPKINS. [SEAL.]

"Witness:
"ROBERT DOUGHERTY.
"W. P. CHILTON, JR.

"THE STATE OF ALABAMA, *Macon County:*

"I, C. A. Stanton, judge of probate in and for said county and State, hereby certify that Arthur F. Hopkins, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

"Given under my hand and seal of office, this 26th day of July, A. D. 1865.

[SEAL.] "C. A. STANTON,
"*Judge of Probate.*"

the complainant John J. Walker was the owner of the undivided one-fourth, complainant Maria Walker was the owner of another undivided one-fourth, and complainants John J. Walker, as such executor, and the other complainants named were jointly the owners of the other undivided two-fourths of said real estate on said day.

And that afterwards, on said day at Chicago aforesaid, complainants, by and through the complainant John J. Walker, as agent and as such executor, acting on their behalf and for himself, employed defendant Samuel H. Kerfoot and defendant J. Ford Pierson, who then and there were doing business as real estate agents and loan brokers, under the firm-name and style of S. H. Kerfoot & Co., to sell said real estate for complainants, and to that end agreed to pay said S. H. Kerfoot &
104 Co., for their services and commissions in that behalf, five per centum of and on the first three thousand dollars, and two and one-half per centum on the balance of the purchase money to be had for said real estate, on sale thereof, through said S. H. Kerfoot & Co., who then and there, in consideration thereof, undertook and agreed to and with the complainants, to serve the complainants faithfully and to the best of their ability, in making sale of said real estate.

And complainants further say that they are informed and believe, and on their information and belief charge the fact to be, that, in breach of the trust thereby in the said S. H. Kerfoot & Co. by complainants reposed and confided, and by the said S. H. Kerfoot & Co. as aforesaid undertaken and accepted, which trust was then well known and understood by the defendant William M. Derby, and contrary to the duty of the said S. H. Kerfoot & Co., and to equity and good conscience in that behalf, the defendant William M. Derby, secretly and covertly uniting, combining, and confederating with the said S. H. Kerfoot & Co., after-

wards, and on or about the 16th day of March, A. D. 1867, at the city of Chicago, and taking undue advantage of the aforesaid relations of trust and confidence between the said S. H. Kerfoot & Co.. and complainants in the premises, agreed to become, with the said S. H. Kerfoot & Co., the said agents of complainants, (well knowing them to be such,) copurchasers and joint owners of such real estate, at a price far below its then cash value; and to that end they, the defendant William M. Derby, thus uniting, and confederating, and combining with the said S. H. Kerfoot & Co., in said breach of trust, with them on said day, for the purpose of effecting and concealing said joint purchase from complainants, arranged and agreed together to hold out to complainants the said William M. Derby to be the sole purchaser, at the sum of twenty-five thousand six hundred dollars, and that, after making such combination and confederacy, and pursuant to such an arrangement and agreement by the said confederates in that behalf made, they, the defendants, William M. Derby and S. H. Kerfoot & Co., did hold out to the complainants that the said William M. Derby was the sole purchaser of said premises, through said S. H. Kerfoot & Co., as complainants' agents, at the price of twenty-five thousand six hundred dollars, and afterwards, in that way and by such means, procured, on or about the 19th day of March, 1867, from your orator John J. Walker, executor as aforesaid, a deed of all said real estate, purporting to convey the said real estate to defendant William M. Derby, to bear date March 16, 1867, to be acknowledged before defendant S. H. Kerfoot, justice of the peace, and afterwards caused the same to be recorded in the recorder's office in Cook County, in book 379 of deeds, on page 466.

And that, not knowing or understanding that the said S. H. Kerfoot & Co. were to be or become interested in said purchase and premises, and all the while reposing trust and confidence in them as complainants' agents, and believing and understanding that the said William M. Derby was the sole purchaser of said premises, and that twenty-five thousand six hundred dollars was an adequate price, the complainant John J. Walker, executor as aforesaid, executed said deed to said William M. Derby, and received from the said defendant William M. Derby, the sum of eight thousand two hundred dollars in cash. And the said defendant William M. Derby, thereupon executed and delivered to said S. H. Kerfoot & Co. his certain promissory notes in writing, to wit: three notes payable to the order of said Walker, executor, each for $1,812 50, and due respectively on or before the 18th March, 1868, 1869, and 1870, with interest at six per centum per annum, at the office of S. H. Kerfoot & Co.; and to secure the same further, by trust deed purporting to bear date March 18, 1867, conveyed the tract of land hereinbefore described and situate in section four, (4,) to one Henry S. Monroe, which deed is of record in said recorder's office, in book 379, p. 468. Also, his three certain other promissory notes in writing, payable as aforesaid, each for $3,987 50, and due respectively on or before the 18th March, 1868, 1869, 1870, at the office of S. H. Kerfoot & Co., with interest at six per centum per annum; and to secure the same further, by trust deed purporting to bear date March 18, 1867, conveyed the rest of said land to said Henry S. Monroe, which trust deed is of record in said recorder's office, in book 380, on page 372.

105 And that afterwards the said defendant William M. Derby, caused to be prepared a quitclaim deed to be executed by the other complainants herein, purporting to convey to him their respective interests in said real estate, and directed the said S. H. Kerfoot & Co. to retain the said notes and trust deeds until the said complainants

should execute and deliver such quitclaim deed to the defendant William M. Derby.

And complainants further say that your orator, John J. Walker, believing the said S. H. Kerfoot & Co. to have acted according to the trust in them reposed, and not knowing the contrary thereof, afterwards, on the 19th day of March, 1867, paid the said S. H. Kerfoot & Co. the sum of seven hundred and fifteen dollars commissions as per agreement in that behalf made as aforesaid, for selling said real estate for your complainants, as set forth and acknowledged by them in their account stated and receipt as follows, to wit:

John J. Walker, esq., executor of the estate of Arthur F. Hopkins, dec'd, in a/c with S. H. Kerfoot & Co.

1867. DR.

March 13.	To cash paid Shortall & Hoard for abstract of title to blocks in Pryor & Hopkins' subd'n in sec. 3, 38, 14		30	
" " "	cash paid to same for abstract of title to land in sec. 4, 38, 14		55	
" 18 "	cash paid for stamps on deed to William M. Derby		26	
" 19 "	cash paid for recording two trust deeds from W'm M. Derby		4 25	
" " "	commissions paid S. H. K. & Co. on sale to W'm M. Derby,			
	5 % on $3,000	$150 00		
	2½ % on 22,600	$565 00	715	
" " "	cash paid Shortall & Hoard for examination of tax sale, &c.		6	
" " "	handed him W'm M. Derby's check on Mechanics National Bank of Chicago		8,200	9,036 25

1867. CR.

March 19.	By William M. Derby cash payment on his purchase of lots in Pryor & Hopkins' subd'n, &c., and land in sec. 4, 38, 14		8,200	
" " "	cash of him to balance a/c		836 25	9 036 25

CHICAGO, *March* 19, 1867.

OFFICE OF S. H. KERFOOT & CO.,
REAL ESTATE AND LOAN BROKERS,
Chicago, M'ch 19, 1867.

$836 25.

Rec'd of Jno. J. Walker eight hundred and thirty-six dollars in full for a/c of fees and expenses incurred in selling land of estate of Arthur F. Hopkins, deceased, as per a/c rendered to date.

(Signed) S. H. KERFOOT & CO.

And complainants further say that, as they are informed, and have recently learned, and on their information and belief charge the fact to be, the said defendant William M. Derby, afterwards received of said S. H. Kerfoot & Co., or that said S. H. Kerfoot & Co. agreed to pay and did secure to defendant William M. Derby, and at his request, one-half of the commissions which the said John J. Walker paid to said S. H. Kerfoot & Co., as hereinbefore set forth and stated, as the defendant Derby's share thereof, by reason of said confederacy, etc.

And complainants further say that, as they have recently been informed, and on their information and belief charge the fact to be, the said defendant William M. Derby, and the said S. H. Kerfoot & Co., to wit: S. H. Kerfoot and J. Ford Pierson, to further complete said joint purchase, or to share and own the said real estate together, and to express the understanding and agreement by them secretly, cor-
106 ruptly, and covertly made as aforesaid, under date of March 19, 1867, made, executed, and interchangeably delivered each to each, an agreement in writing, of which the following is a copy, to wit:

"In consideration of three hundred and seventy-five dollars to me paid by Samuel H Kerfoot and J. F. Pearson, known as S. H. Kerfoot & Co., of the city of Chicago, I do hereby agree to sell and quitclaim to said Kerfoot & Co., at any time before the first day of September, A. D. 1867, said Kerfoot & Co. agreeing to purchase, one-half of the property by me purchased of John J. Walker, the executor of Arthur F. Hopkins, deceased. It is agreed that if the said Kerfoot & Co. shall pay to me in cash four thousand and one hundred dollars, and the further sum of eight thousand seven hundred dollars, payable in one, two, and three years, in equal payments, and bearing interest at six per cent. per annum, and secured by deed of trust. It is further agreed that if the said Kerfoot & Co. should fail to comply with the condition of this agreement, or fail to make payment before the first day of Sept. 1867, then this agreement to be void, and the three hundred and seventy-five dollars so paid by Kerfoot & Co. shall be forfeited to me and retained by me, as stipulated damages for the non-fulfillment of said Kerfoot & Co. part of this agreement.

"Dated, Chicago, March 19, 1867.

"W'M M. DERBY. [SEAL.]
"S. H. KERFOOT. [SEAL.]
"J. F. PIERSON." [SEAL.]

which said written instrument has all the while since been kept secretly from all said complainants, and until about the time of the commencement of this suit.

And complainants further say that when they were afterwards, to wit: on or about the first day of May, A. D. 1867, by the said John J. Walker, requested to make the said sale, and transfer said property to defendant William M. Derby, and in order to obtain the said notes and trust deeds, or the balance of said purchase money, being all the while ignorant of the said combination, confederacy, and secret and covert agreement between the said S. H. Kerfoot & Co. and the defendant William M, Derby, and having not even a suspicion of any breach of trust on the part of said S. H. Kerfoot & Co. in the premises, the complainants, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Kate E. Oliver, Starke H. Oliver, Augusta H. Rice, Juliet A. Hopkins, and William L. Hopkins, united with said John J. Walker, and executed their deed of quitclaim, caused to be prepared as aforesaid, by the defendant William M. Derby, purporting to bear date of the 16th March, 1867, and to convey all their interest in and to the said premises, respectively, to said William M. Derby, to carry out and perfect a sale to him as sole purchaser thereof, and not otherwise; and that the said John J. Walker, for himself and for the rest of the complainants, for that purpose, and still ignorant of the said combination, confederacy, and secret agreement, reduced to writing as aforesaid, delivered said deed of quitclaim, at the city of Chicago aforesaid, to the defendant William M. Derby, on or about the 30th day of May, A. D. 1867, and received therefor the said notes and trust deeds from said S. H. Kerfoot & Co., and completed, as he until recently supposed, a sale of said real estate to said defendant William M. Derby, which said quitclaim deed is of record in said recorder's office, in book 391, page 321; and that said sale was not fully completed until the delivery of said quitclaim deed as aforesaid, and that the said covinous and corrupt agreement was on said day, and at the time of the delivery of said deed from the complainants, as aforesaid, subsisting in writing as afore-

said between the defendant William M. Derby and the defendants Samuel H. Kerfoot and J. Ford Pierson, and was wholly unknown to the complainants, or any or either of them; and that, as was well known to the defendant William M. Derby, the defendants Samuel H. Kerfoot and J. Ford Pierson were agents of the complainants, employed and paid, as aforesaid, to make sale of said property, and had no right, as against your complainants, either directly or indirectly, to acquire such interest in said premises, and in the sale from the complainants to said William M. Derby.

And complainants further say that afterwards, and before complainants learned of said joint purchase and interest of said S. H. Kerfoot & Co., and before said written instrument expressing, or purporting to express, said corrupt and secret agreement between said confed-
107 erates, was recorded, and on or about the 1st day of June, A. D. 1867, the said defendant William M. Derby, paid the sum of money, to wit: the balance of said purchase money, $17,400, and interest from March 16, 1867, secured by his said notes and trust deeds, to and for the use of the complainants, and thereupon the said complainants caused to be surrendered and delivered up the said securities to the defendant William M. Derby, all the while supposing the defendant Derby, to be the sole purchaser, and the price paid for said real estate to be its full cash value at the date of said supposed sale.

And the complainants further say that they are informed and believe, and on their information and belief charge the fact to be, that the said sum of twenty-five thousand six hundred dollars was a grossly inadequate price for said lands, at the time when the said supposed sale was made, and that the defendant William M. Derby knew that fact, and together with the said S. H. Kerfoot & Co., concealed the same from the complainants; that the defendant, William M. Derby, well knew, and all the while understood, and that it is the fact that said S. H. Kerfoot & Co. had, as complainant's agents, been offered better prices by responsible parties, all of which facts, by reason of the trust and confidence reposed in said S. H. Kerfoot & Co., as aforesaid, were unknown to the complainants.

And complainants further say that said written agreement between said William M. Derby and S. H. Kerfoot and J. F. Pierson, was recorded in said recorder's office, in book 404, page 292, but complainants had no actual knowledge thereof until recently, and have not in any way or manner ratified or confirmed the said joint purchase by the said confederates, S. H. Kerfoot & Co. and William M. Derby, or joint interest by them thus acquired.

And complainants further say that they have recently learned, and on their information and belief, charge the facts to be, that from the making of said agreement aforesaid, uninterruptedly and continuously until the 5th day of September, A. D. 1868, the said Samuel H. Kerfoot and J. Ford Pierson held out, pretended, and claimed to be the true and lawful owners of the undivided one-half of all said real estate, by reason of the premises, and especially under and by virtue of the said written agreement between said William M. Derby and said Samuel H. Kerfoot and J. Ford Pierson, so made as aforesaid; that the sum of $375 mentioned in said agreement was intended to and did represent the share of the commissions for making sale of said property by complainants paid to S. H. Kerfoot & Co., as aforesaid, which said Derby was entitled to by virtue of the aforesaid covinous and corrupt and fraudulent combination, &c., as aforesaid; that, according to the tenor and effect of said agreement, the said Samuel H. Kerfoot and J. Ford Pierson made ten

der of the money and securities mentioned in said agreement, and offered to do and perform everything on their part to be done and performed, and that the said Derby refused to do and perform all or anything he was in duty bound to do and perform, according to the terms and conditions, and the tenor and effect of said agreement, so that afterwards, and before the 5th day of September, 1868, the said Samuel H. Kerfoot and J. Ford Pierson caused to be prepared their bill of complaint, as complainants, against the defendant, William M. Derby, of the purport, tenor, and effect, as the same is set forth in Exhibit "A," hereto annexed, and hereby made a part hereof.

And complainants say that they are informed and believe, and therefore allege, that the said J. Ford Pierson hath heretofore caused to be made and filed in the recorder's office, in said city of Chicago, and county of Cook, his affidavit of the tenor and effect, as the same is set forth in Exhibit "B," hereto annexed and made a part hereof.

And complainants further say that, since said agreement between the said S. H. Kerfoot & Co. and said defendant William M. Derby was made as aforesaid, they, the defendants William M. Derby and S. H. Kerfoot, have resorted to various pretexts, shifts, excuses, assertions and subterfuges, to conceal and cover up the interest of the said S. H. Kerfoot & Co., acquired and secured as aforesaid in said premises, but that as soon as the said transaction became fully known and understood by the complainants, they set about the bringing of this their bill.

And complainants further say that, in the month of February, 1868, and as soon as it was intimated to your said orator, John J. Walker, that said S. H. Kerfoot & Co. had any interest with said Derby
108 in said property, your said orator wrote to the defendant, Samuel H. Kerfoot, a letter of date February 24, 1868, in the words and figures as set forth in Exhibit "C," hereto annexed and made a part hereof; and that said defendant, Kerfoot, well knowing and understanding the facts stated in the said affidavit of said defendant J. Ford Pierson, marked Exhibit "B," and in the said Exhibit "A" to be true, afterwards, under date of February 29, 1868, answered your orator, John J. Walker's said letter in the manner and form and in the words and figures set forth in Exhibit "D," hereto annexed and made a part hereof. And that your orator, John J. Walker, still reposing trust and confidence in said defendant, Samuel H. Kerfoot, and believing the statement in said Exhibit "D" contained, that he, as well as the said S. H. Kerfoot & Co., had no interest in said property with said defendant Derby, and not knowing the facts set forth in Exhibits "A" and "B," relative to such interest, was for a time thereafter thereby satisfied that the said S. H. Kerfoot or S. H. Kerfoot & Co. had no interest in said premises, and had served the complainants faithfully, as at all times they had to your orator, John J. Walker, claimed to have done.

And complainants further say that the said defendant, Samuel H. Kerfoot, was the agent of the said Arthur F. Hopkins, during his lifetime, touching said property, and had charge thereof as such agent, and that sale of the same was made by and through the counsel, advice, and agency of the said Samuel H. Kerfoot and J. Ford Pierson, as hereinbefore set forth, and not otherwise, as was well known and understood by said defendant Derby; and that said complainants derived all their knowledge of said property from said S. H. Kerfoot & Co., or said defendant, Samuel H. Kerfoot, after the decease of said Arthur F. Hopkins, as will more fully and at large appear in the Exhibits E, F, and G, hereto annexed, and made a part hereof, the same being letters from said defendant, Samuel H. Kerfoot to said John J. Walker, of date re-

spectively August 31, 1866, March 19, 1867, and April 11, 1867, as well as from the premises and other exhibits hereto annexed.

And complainants further say that your orator, John J. Walker, relying upon the knowledge, skill, and ability, as well as on the counsel and advice of the defendant, Samuel H. Kerfoot, touching said property, on or about the 1st day of March, 1867, frankly informed the said Samuel H. Kerfoot that it had become necessary to raise, for the purpose of the estate of the said Hopkins, immediately, the sum of $10,000 in cash out of complainants' aforesaid property, which it was thought advisable to do by said complainants by predicating a loan thereon, and that your orator John J. Walker, to that end then and there solicited and requested the said S. H. Kerfoot & Co. to obtain a loan thereon of $10,000 for the benefit of the complainants, but that said S. H. Kerfoot & Co. represented to your said orator that it would be impossible to obtain a loan on said property for that amount at that time, which representations your said orator relied upon and believed to be true; that said S. H. Kerfoot & Co. well knew and understood, as the fact was, that said representations were false, and that had said S. H. Kerfoot & Co. exerted themselves to obtain said loan, or had it then been made known to capitalists that a loan of $10,000 was, or had been desired on said property, the same could easily have been obtained in Chicago; and that said S. H. Kerfoot & Co., in view of such facts, and with the intent to deceive the complainants and your orator John J. Walker, in the premises, and to obtain an interest in the property as aforesaid, as such agents, counseled and advised your orator as aforesaid, in view of complainants' said necessities in the matter, that the only way said $10,000 could be raised from said property at that time was to sell said property. Whereupon it was then and there decided to sell and dispose of said property at the highest market price. And your complainants further allege that thereupon your orator John J. Walker, directed said S. H. Kerfoot & Co., before selling said property, to advertise the same for sale, and that he was subsequently informed by said Kerfoot or said Pierson, and then believed, that the same was then and there duly advertised by the said S. H. Kerfoot & Co.; but the complainants cannot learn that said property was so advertised, and thereupon charge the fact to be that said S. H. Kerfoot & Co. did not advertise the same for sale at all before making said pretended sale, but kept the same out of market for the purpose of acquiring an interest therein, as aforesaid, with said Derby or some other person, without the knowledge or consent of complainants, well knowing and understanding, as the fact was,
109 that the complainants depended and relied solely and entirely upon the knowledge, skill, and ability of the said S. H. Kerfoot & Co. in the premises.

And complainants further say that said S. H. Kerfoot & Co. represented to the said John J. Walker in the month of March, 1867, that that was a bad time to sell said property; but said complainants aver and charge the fact to be that said representation was false and untrue, and was made for the purpose of inducing complainants to sell said property at the price at which said Derby and said S. H. Kerfoot & Co. proposed to pay therefor.

And complainants further show that it was the duty of said S. H. Kerfoot & Co., being agents for complainants, as aforesaid, and having received their commissions for making sale to said Derby of said property as aforesaid, to have fully informed the complainants of all the facts set up in the said bill of complaint marked "Exhibit A," and of all the facts set up in the affidavit of J. Ford Pierson, marked "Exhibit B," in answer

to said letter of said Walker, of date February 24, 1868, marked "Exhibit C," instead of answering them by the statements, subterfuges, and pretexts, set forth in the letter of said S. H. Kerfoot, of date February 29, 1868, marked "Exhibit D." And complainants therefore charge the fact to be, that said letter of February 29, 1868, was written by the said Samuel H. Kerfoot for no other purpose than to cover up and conceal the interest of said S. H. Kerfoot & Co. in the premises, and to allay the suspicions of the said Walker. And complainants further charge the fact to be, in view of the premises, that it was not true, and that the statement positively made by said Samuel H. Kerfoot in said letter of February 29, 1868, to wit: "1st. We never had any offer from any person whatever of $200 per acre, or any more than you received for the land of the Hopkins estate here sold Derby," was false, and at that time was known to the defendant Kerfoot to be false and untrue. That the statement in said letter that "2d. Neither I, my partner, or my firm had any interest in the purchase of that land from you," was well known to the defendant Kerfoot to be false and untrue, and that the same was made in full view of the facts set forth in defendant Pierson's said affidavit, marked "Exhibit B," and the facts subsequently alleged and set forth by both said Kerfoot and said Pierson in said bill of complaint, marked "Exhibit A."

And complainants further say that they are informed and believe, and so charge the fact to be, that the pretence of said defendant Kerfoot that said lands, or any part thereof, were of so much less value by reason of any "slough existing" thereon, was untrue and false, and that the market value of all said land at the time said pretended sale was made was at least $1,200 per acre, which fact the defendants Derby, Kerfoot, and Pierson, each, every, and all of them, well knew and understood.

And complainants further say that they are informed and believe, and so charge the fact to be, that, well knowing and understanding that said S. H. Kerfoot & Co. were agents, as aforesaid, to your orators, and well knowing and understanding, and being well and sufficiently advised that, by reason of that fact, to wit, that said Kerfoot & Co. were agents, as aforesaid, for your orators, and well knowing and understanding, and being well and sufficiently advised that, by reason of that fact, to wit, that said Kerfoot & Co. were agents of the complainants in the premises, and had, in securing and reserving to themselves the benefit of a half interest in said property, upon the same terms and conditions that said Derby had through them obtained of and from your complainants, been guilty of a breach of trust towards your complainants; the defendant, William M. Derby, utterly refused to comply with his said executory agreement in writing, of date March 19, 1867, so that said S. H. Kerfoot & Co. were compelled to cause to be prepared the said bill of complaint, marked "Exhibit A," in order to obtain their joint interest therein from said Derby.

And your complainants further say that they are informed and believe, and so charge the fact to be, that by producing or exhibiting said bill of complaint, or informing the said Derby thereof, and of their intention to file the same in court, the said S. H. Kerfoot & Co. effected a compromise with said Derby, and said Derby yielded and paid them a large sum of money, the amount whereof is unknown to your complainants, and further promised and agreed to yield and pay to the said S. H. Kerfoot & Co. a share of the profits derived from said land, as the same should be sold or disposed of, notwithstanding their deed to defendant Derby, hereinafter recited, of date September 5, 1868.

110 And complainants further say that they are informed and be-

lieve, and on their information and belief allege, that defendant Henry S. Monroe now has the said notes and deeds executed to him as trustee, as aforesaid.

And complainants further say that they are informed and believe, and on their information and belief allege, that all the defendants named herein, except the defendants Derby, Kerfoot, and Pierson, have, or claim to have, some interest in the property which belonged to the complainants, as aforesaid, on the 1st day of March, 1867, which they have derived by, from, or under defendants Derby, Kerfoot, or Pierson, or some of them, since that day, as more particularly set forth, so far as the same appears of record, in the abstract hereto annexed, marked "Exhibit H," which is hereby made a part hereof, and that said defendants now owe the said Derby, Kerfoot, and Pierson for the purchase money therefor, or some part thereof.

And complainants further say that they are informed and believe, and so charge the fact to be, that, well knowing and understanding that the said transaction was fraudulent and void as against the complainants, the said Derby further connived with the said Samuel H. Kerfoot and J. Ford Pierson, and to that end for a large sum of money, to wit, the sum of $5,000, or some other valuable consideration to your complainants unknown, to cheat and defraud complainants in the premises, heretofore, to wit, on the 5th day of September, A. D. 1868, the said Samuel H. Kerfoot and J. Ford Pierson, by deed of quit-claim of that date, ostensibly transferred and conveyed their said interest in said purchase and premises to the defendant William M. Derby, which deed is of record in said recorder's office, in book 472, page 393, but, as complainants are informed and believe, and charge the fact to be, that the said defendants Derby and Kerfoot and Pierson have all the while, since the 16th day of March, 1867, been, and still are, in some way or manner interested in said lands, or some part thereof, or in the proceeds thereof.

And complainants further say that of real estate the defendant William M. Derby has now in his possession the following-described lands, to wit:

The east half of block one, (1,) the west half of block five, (5,) and lots one, (1,) two, (2,) twenty-three, (23,) and twenty-four, (24,) in block twelve, (12,) in Pryor & Hopkins' subdivision aforesaid, and as your complainants are informed and believe, and therefore, upon their information and belief charge the fact to be, is about to dispose of the same, and convert the same into cash, claiming the same as his own property.

And complainants further say that of said lands the said defendant William M. Derby, heretofore, to wit, on or about the 9th day of September, 1868, transferred and conveyed by his deed of record in said recorder's office, in book 481, page 531, the tract situate in section four (4) as aforesaid, the said east half of block six, (6,) and the said east half of block five, (5,) to defendant Alonzo Rawson, and has received therefor the sum of eighty-six thousand dollars, or holds securities therefor, or a portion thereof, which said securities were, or are, as follows, to wit: Four trust deeds, executed of date Aug. 5, 1868, by said Rawson to said Henry S. Monroe, and of record in said recorder's office, respectively, to wit: one in book 466, page 610; one in book 466, page 613; one in book 466, page 616, and one in book 470, page 291, together with the notes respectively described in said several trust deeds.

And complainants further say that said defendant William M. Derby hath heretofore, to wit, on the first day of August, 1868, sold of said

real estate block four (4) to the defendant Samuel Wing, and by deed dated on that day conveyed the same to said Samuel Wing, and received therefor the sum of thirty thousand dollars, part in cash and part secured, as hereinafter set forth, which deed is of record in said recorder's office, in book 471, page 23, and also received from said Samuel Wing a trust deed to said Henry S. Monroe, securing $14,000 as therein described, to be paid to the defendant Derby, which said trust deed is recorded in said recorder's office, in book 471, page 25.

And complainants further say the defendant William M. Derby, or said Kerfoot, or said Pierson, holds said securities and said proceeds of said sales, as they insist as their own property; but the complainants here insist that, by reason of the premises, and according to
111 equity and good conscience, said defendants, or some of them, in truth and in fact hold said proceeds, securities, and property in trust for the complainants, and not otherwise, and should be compelled to account to and with said executor, and to him or to a receiver, to be appointed by the court, surrender all said money and securities, and yield and deliver up the said east half of block one, (1,) and west half of block (5,) and lots 1, 2, 23, and 24, in block 12, as well as any other part of said lands so purchased of complainants as aforesaid, which any of said defendants Derby, Kerfoot, and Pierson, still holds and has not sold to bona fide purchasers, and reconveyance thereof make to said executor or to said receiver, after deducting from said moneys enough thereof to repay him or them the said $25,600 and interest so paid for said lands to the complainants as aforesaid, and that each of the defendants Derby, Kerfoot, and Pierson, should full and perfect disclosure make of all said sales, and all and any other sales, if any, and all the rents, issues, and profits of said property since the same came to his hands, and that said deeds from said executor and from said complainants, of date March 16, 1867, except as to the property by the defendants to bona fide purchasers before the filing of their bill herein, sold and conveyed, should be declared null and void, and vacated, canceled, annulled, and set aside.

And that the said defendants Derby, Kerfoot, and Pierson, individually or collectively, should be required to admit moneys enough in their hands which they have received from such sales, and as aforesaid, to repay him or them for said $25,600 and interest.

And the complainants now here in open court, bring the sum of $25,600, and interest thereon from said 16th day of March, 1867, and all moneys paid by said defendant Derby to John J. Walker, executor, as aforesaid, or otherwise, for said lands, to be refunded and paid over to said defendant Derby, under the orders of this honorable court, and they hereby tender the same to the defendants Derby, Kerfoot, and Pierson, or any or either of them entitled thereto, or they hereby authorize and direct him or them, when he or they shall have fully accounted to and with the said executor, and has or have given up the property still remaining in his or their hands, together with the balance of money found due, if any, to the complainants, and all outstanding securities aforesaid, to retain and keep out of and deduct from the proceeds of complainants' said lands, the said $25,600 and interest thereon, which defendant Derby [ostensibly alone] has paid to complainants aforesaid.

And the complainants further say that they hereby consent that out of the moneys received by the defendants Derby, Kerfoot, and Pierson, from said sales, or from said property as aforesaid, they shall be repaid the said $25,600 and interest, and all other sums of money he or they may be entitled to, if any, and that they, the complainants herein, on

their part furthermore offer to do, perform, stand to, and abide by whatever else may be according to equity and good conscience, as this honorable court may order, direct, or decree in the premises.

And said complainants further bring into court exemplifications of all said several deeds and said written instruments, and file the same herein in support of this their bill.

And said complainants further say that they are informed and believe, and on their information and belief charge the fact to be, that the said defendant William M. Derby, has already incumbered the west half of block five (5) aforesaid, in the sum of $10,000, and to that end has predicated on said west half of block (5) a mortgage deed dated Sept. 24, 1868, to defendant Joseph B. Shepard, of record in said recorder's office, in book 122, page 450, securing to said Shepard or his assigns, the payment of two certain notes for $5,000 each, therein described, and threatens to incumber the balance of said lands, and to transfer and dispose of all said lands, securities, and moneys, to prevent complainants from obtaining adequate relief in the premises.

And complainants further say that they are informed and believe, and so charge the fact to be, that from the first day of July, 1868, all the while, and now, all said property so owned by the complainants was, has been, and is, worth the just and full sum of $300,000.

In tender consideration whereof, and forasmuch as the complainants are remediless in the premises, at and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this nature are properly cognizible and relievable:

112 To the end, therefore, that the defendants may, if they can, show why the complainants should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowlege, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether it is not a fact that complainants, John J. Walker and Maria Walker, were, on the first day of March, 1867, the owners of the said real estate, each of the one-fourth thereof, and that John J. Walker, executor, and the other complainants, were on that day the owners of the undivided two-fourths thereof, in the manner and form and as stated in the premises.

2. Whether it is not true that complainants employed the defendants Kerfoot and Pierson, acting as the firm of S. H. Kerfoot & Co., as their agents to sell said real estate, and whether the account stated and receipt of said S. H. Kerfoot & Co. are not truly and correctly set forth in the premises, as they were made and delivered by said firm to said John J. Walker, executor, and whether said executor did not, as in said premises mentioned, pay the said firm of S. H. Kerfoot & Co. the sum of $836 25 for expenses and services as such agents for selling said property; and whether the sum of $715 was not paid said firm, as specified in said account stated, for the commissions of said firm by such firm in making sale thereof, as mentioned and set forth in the premises.

3. Whether said Kerfoot & Co., did not agree [illegible] commissions and money so received of complainants with William M. Derby, or whether said commissions have been so divided.

4. Whether an agreement in writing was not [illegible] the

real estate block four (4) to the defendant Samuel Wing, and by deed dated on that day conveyed the same to said Samuel Wing, and received therefor the sum of thirty thousand dollars, part in cash and part secured, as hereinafter set forth, which deed is of record in said recorder's office, in book 471, page 23, and also received from said Samuel Wing a trust deed to said Henry S. Monroe, securing $14,000 as therein described, to be paid to the defendant Derby, which said trust deed is recorded in said recorder's office, in book 471, page 25.

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111 equity and good conscience, said defendants, or some of them, in truth and in fact hold said proceeds, securities, and property in trust for the complainants, and not otherwise, and should be compelled to account to and with said executor, and to him or to a receiver, to be appointed by the court, surrender all said money and securities, and yield and deliver up the said east half of block one, (1,) and west half of block (5,) and lots 1, 2, 23, and 24, in block 12, as well as any other part of said lands so purchased of complainants as aforesaid, which any of said defendants Derby, Kerfoot, and Pierson, still holds and has not sold to bona fide purchasers, and reconveyance thereof make to said executor or to said receiver, after deducting from said moneys enough thereof to repay him or them the said $25,600 and interest so paid for said lands to the complainants as aforesaid, and that each of the defendants Derby, Kerfoot, and Pierson, should full and perfect disclosure make of all said sales, and all and any other sales, if any, and all the rents, issues, and profits of said property since the same came to his hands, and that said deeds from said executor and from said complainants, of date March 16, 1867, except as to the property by the defendants to bona fide purchasers before the filing of their bill herein, sold and conveyed, should be declared null and void, and vacated, canceled, annulled, and set aside.

And that the said defendants Derby, Kerfoot, and Pierson, individually or collectively, should be required to admit moneys enough in their hands which they have received from such sales, and as aforesaid, to repay him or them for said $25,600 and interest.

And the complainants now here in open court, bring the sum of $25,600, and interest thereon from said 16th day of March, 1867, and all moneys paid by said defendant Derby to John J. Walker, executor, as aforesaid, or otherwise, for said lands, to be refunded and paid over to said defendant Derby, under the orders of this honorable court, and they hereby tender the same to the defendants Derby, Kerfoot, and Pierson, or any or either of them entitled thereto, or they hereby authorize and direct him or them, when he or they shall have fully accounted to and with the said executor, and has or have given up the property still remaining in his or their hands, together with the balance of money found due, if any, to the complainants, and all outstanding securities aforesaid, to retain and keep out of and deduct from the proceeds of complainants' said lands, the said $25,600 and interest thereon, which defendant Derby [ostensibly alone] has paid to complainants aforesaid.

And the complainants further say that they hereby consent that out of the moneys received by the defendants Derby, Kerfoot, and Pierson, from said sales, or from said property as aforesaid, they shall be repaid the said $25,600 and interest, and all other sums of money he or they may be entitled to, if any, and that they, the complainants herein, on

their part furthermore offer to do, perform, stand to, and abide by whatever else may be according to equity and good conscience, as this honorable court may order, direct, or decree in the premises.

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In tender consideration whereof, and forasmuch as the complainants are remediless in the premises, at and by the strict rules of the common law, and are only relievable in a court of equity, where matters of this nature are properly cognizible and relievable:

112 To the end, therefore, that the defendants may, if they can, show why the complainants should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowlege, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether it is not a fact that complainants, John J. Walker and Maria Walker, were, on the first day of March, 1867, the owners of the said real estate, each of the one-fourth thereof, and that John J. Walker, executor, and the other complainants, were on that day the owners of the undivided two-fourths thereof, in the manner and form and as stated in the premises.

2. Whether it is not true that complainants employed the defendants Kerfoot and Pierson, acting as the firm of S. H. Kerfoot & Co., as their agents to sell said real estate, and whether the account stated and receipt of said S. H. Kerfoot & Co. are not truly and correctly set forth in the premises, as they were made and delivered by said firm to said John J. Walker, executor, and whether said executor did not, as in said premises mentioned, pay the said firm of S. H. Kerfoot & Co. the sum of $836 25 for expenses and services as such agents for selling said property; and whether the sum of $715 was not paid said firm, as specified in said account stated, for the commissions of said firm, earned by such firm in making sale thereof, as mentioned and set forth in the premises.

3. Whether said Kerfoot & Co., did not agree to divide or share such commissions and money so received of complainants, with defendant William M. Derby, or whether said commissions were not or have not been so divided.

4. Whether an agreement in writing was not made between said

Derby and Kerfoot & Co. of the form, tenor, and effect set forth in the stating part of this bill.

5. Whether or not it is a fact that said J. Ford Pierson made affidavit in the manner, form, tenor, and effect as set forth in said Exhibit "B."

6. Whether or not the facts set forth in said affidavit were true, that is to say, whether it is true that said agreement was made, and whether said firm of Kerfoot & Co. did perform everything to be done and performed according to the terms and effect of said agreement, and whether said Derby did not utterly refuse or neglect to do and perform his part of such agreement, as stated in said Exhibit "B."

7. Whether it is not a fact that either defendant Samuel H. Kerfoot, or defendant J. Ford Pierson, or said firm of S. H. Kerfoot & Co., caused a bill of complaint to be prepared, as set forth in Exhibit "A."

8. Whether it is not true that such bill of complaint was of the form, substance, tenor, and effect as set forth in Exhibit "A," hereto annexed, or whether the said Exhibit "A" is not substantially a copy of the bill of complaint which defendants Kerfoot and Pierson, or either of them, caused to be prepared, as is in the premises mentioned and stated; and, if not, how with truth was the same prepared, and of what form, tenor, substance, and effect, and in what respects and particulars, if any, said copy or Exhibit "A" differs from the bill of complaint which was caused to be prepared, and produce the original bill; and, if you cannot or do not, state why, and produce a copy, if Exhibit "A" be not a copy.

9. Whether it is not true that the original agreement (which you will please produce,) was reduced to writing by defendant Derby instead of by defendant Kerfoot, and whether, in the original agreement, the words "I" and "me" therein do not refer to defendant Derby, and the word "Pearson" therein does not refer to defendant J. F. Pierson.

10. Whether it is not true that the original agreement was assigned to defendant Pierson by defendant Kerfoot, as stated in such Exhibit "A," and whether both are not recorded, and whether the exemplification thereof, on file with this amended bill, is not a true and correct copy of said agreement and the assignment thereon endorsed.

113 11. Whether it is not true that the quitclaim deed from complainants to defendant Derby, conveying the said real estate, of date March 16, 1867, was delivered to defendant Derby on or about the 30th day of May, 1867; if not, when was the same delivered to said Derby?

12. Whether it is not a fact that when said quitclaim deed was delivered to defendant Derby, the said agreement between Kerfoot & Co. and Derby was subsisting in writing, bearing date March 19, 1867.

13. Whether it is not a fact that the whole of the purchase money was not paid by the defendant Derby to said Walker until on or about the 1st day of June, 1867, and that the amount of the purchase money paid on or about the time of the delivery of said quitclaim deed, was the sum of $17,400, and interest from March 16, 1867, $10,000 in cash, and the balance in property, to wit: Block 3, in Derby & Wallace's subdivision of that part south of Barry Point road of N. W. ¼ of N. W. ¼ of sec. 13, T. 39, R. 13; if not, when and how was the $17,400 paid?

14. Whether it is not a fact that but $8,200 of the purchase money aforesaid was paid on the 19th day of March, 1867.

15. Whether it is not true that said Walker wrote the letter as stated in Exhibit "C," to said Kerfoot.

16. Whether it is not true that said Kerfoot wrote to complainant Walker the several letters as stated in Exhibits "E," "F," "G," "D."

Whether at the time of writing the letter set forth in Exhibit "D,"

the facts stated in Exhibit "B," or affidavit made by J. Ford Pierson, were not well known to said Kerfoot.

18. Whether there were not steps taken by said Kerfoot & Co. after February 29, 1868, to enforce the rights secured by said agreement between Derby and Kerfoot and Pierson, in chancery or otherwise; and if yea, state what steps were taken.

20. Whether in consideration for said quitclaim deed, the defendant Derby did not pay to said Kerfoot and Pierson, or one of them, or for their or his benefit, in cash or property, real, personal, or mixed, or secure the same to be paid, or delivered and conveyed, the sum of $5,000, and if not, what sum; and what was the true, real, and actual consideration of the making of said quitclaim deed from defendants Kerfoot and Pierson to defendant Derby, as set forth in the premises?

21. Whether or not on the 5th day of September, 1868, the actual cash value of all complainants' said real estate so transferred to said Derby, and so agreed to be divided by Derby, and Kerfoot & Co., as stated in the premises, was the sum of $300,000 and upwards; and if not, what was its then actual cash value?

22. Whether or not defendant Derby has since then sold the said property in manner and form, and to the other defendants, as stated in the premises?

23. What interest in said premises have said defendants, or any of them, by, from, through, or under defendant Derby, each, every, or all, or any of them; and how, when, and for what price was the same acquired, and how was the price or purchase money paid, or secured to be paid; how much has been paid; to whom and when paid, and how much remains unpaid; how is the same secured, and who holds the securities? State fully and particularly concerning the respective interests of the said defendants in said lands, or any part or portion thereof.

24. Whether it is not true that the legal title to, and possession of, the said E. ½ of bl. 1, W. ½ B. 5, and lots 1, 2, 23, and 24 are in defendant Derby, and if either the title or possession thereof is not in said Derby, state who has said title, and who has the possession of the same, and of each and every part and parcel thereof.

25. Whether or not it is true that said Derby has sold said property (described in 24th interrogatory herein,) or any part or portion thereof; and if yea, what part or portion, to whom, when, where, how, and for what price; how secured; how much was paid by the purchasers respectively therefor; how much remains due and unpaid, and how secured, and who holds the securities therefor?

26. Whether or not defendant has incumbered any part or portion of said property; if yea, how, what part or portion, and has he not the proceeds of such incumbrances?

114 27. Whether the defendant Kerfoot or said Pierson has, either directly or indirectly, received from said Derby or from said purchasers or incumbrancers, any part or portion of said property, securities, or any money for the same, or from the same; or whether some part or portion thereof is not now secured to be paid to said Kerfoot and Pierson, or held either in trust or otherwise for them, or for the firm of S. H. Kerfoot & Co., either directly or indirectly.

28. Whether it is true or not, that said defendant Monroe holds any trust deeds, notes, or other securities for or in anywise touching said lands, or any part or portion thereof; and if yea, what are they?

NOTE.—The defendant William M. Derby is required to answer the

interrogatories numbered, respectively, 1, 2, 3, 4, 6, 7, 9, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27.

The defendant Samuel H. Kerfoot is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

The defendant J. F. Pierson is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27.

The defendant Henry S. Monroe is required to answer the interrogatories numbered, respectively, 23 and 28.

All the other persons herein named, defendants, except William M. Derby, Samuel H. Kerfoot, J. Ford Pierson, and Henry S. Monroe, are required to answer interrogatory numbered 23.

And that the said William M. Derby, Samuel H. Kerfoot, and J. Ford Pierson may admit moneys sufficient in their hands, arising from the sales of said parts of said lands sold to the said Samuel Wing and Alonzo Rawson, and other persons, to repay the purchase money paid to complainants for said lands, and that the said defendants may otherwise set forth a particular account of the terms of the sale of said block four (4) to said Samuel Wing, and bring into court the moneys and securities and other property received therefor, as well as the terms of the sale to the said Alonzo Rawson, and of the sales to other persons, if any, and bring into court the moneys and securities and other property received of the said Rawson and other persons, if any, as the proceeds of said sales, together with the moneys received on said mortgage to said Joseph B. Shepard, and a full, true, and just account of all the rents, issues, and profits which have come to their hands in any way from any part or portion of said lands, and that each, every, and all of said defendants may full and complete disclosure make of all their acts and doings in the premises.

And that, after deducting the moneys paid to complainants, the said William M. Derby, Samuel H. Kerfoot, and J. Ford Pierson, or either of them, pay over to the said complainants, according to their respective rights therein, the balance of said moneys remaining in his or their hands, arising from his or their said sales, and from said lands in any way.

And that the said William M. Derby, Samuel H. Kerfoot, and J. Ford Pierson, each, every, and all of them, be ordered and decreed to retransfer and convey to said complainants, so that they shall respectively be seized of their former estate therein, free of all incumbrances of every name and nature, the following-described real estate, to wit:

The east half of block one (1) and the west half of block five, (5,) and lots one, (1,) two, (2,) twenty three, (23,) and twenty-four, (24,) all in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section three, (3,) township 38, range 14, east of the 3d p. m., and any other part or portion of complainants' said lands now in their possession, or in the possession of any of them, and surrender and deliver and yield up to said executor the full, complete, quiet, and peaceable possession thereof.

And that the said Samuel H. Kerfoot and J. Ford Pierson bring into court and pay over to the complainants, or refund to the defendant, William M. Derby, the moneys so received from him for the said quitclaim deed, and for their interest, claim, and demand of, in, and to said property, or the proceeds thereof, which have come to their hands in any way. And that all said defendants, except said Derby, Kerfoot, and Pierson, be required to pay over and deliver to said executor, or to

a receiver, all said property, securities, money, &c., due to the said Derby, Kerfoot, and Pierson, or either of them, by reason of said lands, for the purchase price or money thereof.

And that the said William M. Derby, Samuel H. Kerfoot, and J. Ford Pierson be enjoined and restrained perpetually from in any way or manner interfering or intermeddling therewith; and that to prevent said
William M. Derby, Samuel H. Kerfoot, and J. Ford Pierson from
115 disposing of said securities, and from conveying or in any way
encumbering any further part or portion of said real estate, from the filing of the bill herein, the said William M. Derby, Samuel H. Kerfoot, and J. Ford Pierson may be enjoined and restrained in that behalf until the further order of the court, as well as during the pendency of this suit. And that all said other defendants may be enjoined and restrained from paying over or delivering to defendants Derby, Kerfoot, and Pierson, or any of them, any further portion of the price or purchase money due or to become due or payable for any part or portion of said lands.

And that the complainants may have not only their costs, but such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity.

May it please your honors to grant unto your complainants an order or writ of injunction, or orders or writs of injunction, as prayed for above, restraining and enjoining the said defendants, each, every, and all of them, in manner and for the purpose hereinbefore specified; also, a receiver, with the usual powers and orders.

And may it further please your honors to grant unto your said complainants the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to each, every, and all said defendants, except said William M. Derby, who has already appeared herein, commanding them by a certain day, and under a certain penalty therein to be inserted, to be and appear before the said court, and then and there to answer the premises; and further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And the complainants will ever pray, &c.

JOHN J. WALKER,
JOHN J. WALKER, *Executor*,
MARIA WALKER,
WILLIAM BARNEWALL,
MARY M. BARNEWALL,
HENRY A. LOWE,
CORNELIA C. LOWE,
AUGUSTA H. RICE,
JULIET A. HOPKINS,
WILLIAM L. HOPKINS,
STARKE H. OLIVER, and
KATE E. OLIVER,
By HILL & DALE,
Their Solicitors.

HILL & DALE, *Complainants' Solicitors.*
A. L. COLLINS, *Of Counsel.*
EDWARD J. HILL, *Of Counsel*
W'M C. REYNOLDS, *Of Counsel.*

State of Illinois, Cook County.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Edward J. Hill, being duly sworn, says that he is one of the counsel for the complainants named in the above and foregoing amended bill of complaint; that he has carefully read and knows the contents thereof, that the same are true, of his own knowledge, except as to the matters therein stated on information & belief, and that as to these matters he believes it to be true. Deponent further says that his said knowledge & information are derived from statements made to deponent by complainant John J. Walker, & from papers & documents now in his possession, and made examination of the records of Cook County, Illinois, & investigation as such counsel & solicitor for complainants; that all said complainants, & each & every of them, are now out of said district & State, & are non-residents therein & thereof, for which reason said bill is verified by deponent on behalf of said complainants.

EDWARD J. HILL.

Subscribed & sworn to before me this 10th day of August, A. D. 1869.

W'M H. BRADLEY, *Clerk.*

116 EXHIBIT "A."—*Referred to in, and forming a part of, the foregoing amended bill.*

To the honorable the chief justice and associate judges of the superior court of Chicago, in chancery, sitting in and for the county of Cook, in the State of Illinois:

Humbly complaining, your orators Samuel H. Kerfoot and J. Ford Pierson, show that, on or about the 16th day of March, A. D. 1867, at said county, William M. Derby purchased of John J. Walker, executor of Arthur F. Hopkins, deceased, certain real estate, situated in the county of Cook, and State of Illinois, known and described as follows, to wit: An equal undivided half part of the first following-described tract of land, known as that part of the northeast quarter of section four, (4,) township thirty-eight, (38,) north of range fourteen, (14,) east of third principal meridian, bounded and described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods, thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad seventy-four rods to the north line of said quarter section; thence east on said line to the place of beginning; also, the whole of the following described pieces or parcels of land, to wit: the east half of block numbered one, (1,) and the east half of block numbered six, (6,) and the whole of blocks numbered five (5,) and four, (4.) and lots numbered one, (1,) two, (2,) twenty-three, (23,) and twenty-four, (24,) in block numbered twelve, (12,) all in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section numbered three, (3,) in township and range aforesaid; which said lands were so conveyed by said Walker, as such executor, subject to any rights and privileges then enjoyed by Union Stock Yard and Transit Company as touching such premises.

And a copy of the deed from said Walker to said Derby is hereto annexed, marked Exhibit "A."

Afterwards, to wit, on the 16th day of March, A. D. 1867, at said county, the said William M. Derby agreed with your orators to sell to

your orators one-half of the said property which had been so purchased by the said Derby from the said Walker, as such executor, which sale to your orators was on the terms that your orator should pay said Derby one-half of the price at which said lands were sold by the said Walker to the said Derby; that is to say, that your orators should pay, in all, twelve thousand eight hundred dollars, (being one-half of the price which said Derby had agreed to pay said Walker,) of which $12,800 00 your orators were to pay $4,100 00, on the execution of a deed by said Derby, and the remainder of which $12,800 00 was to be payable in three equal annual instalments, with interest, in one, two, and three years, and to be secured by a deed of trust.

The said agreement was made verbally, but on or about the 19th day of March, 1867, said Derby undertook to reduce the same to writing, and the writing thereupon drawn by him was executed by said Derby and your orators, and is as follows:

"In consideration of three hundred and seventy-five dollars to me paid by Samuel H. Kerfoot and J. F. Pearson, known as S. H. Kerfoot & Co., of the city of Chicago, I do hereby agree to sell and quitclaim to said Kerfoot & Co., at any time before the first day of Sept., A. D. 1867, said Kerfoot & Co. agreeing to purchase, one-half of the property by me purchased of John J. Walker, the executor of Arthur F. Hopkins, deceased. It is agreed that if the said Kerfoot & Co. shall pay to me in cash four thousand and one hundred dollars, and the further sum of eight thousand and seven hundred dollars, payable in one, two, and three years, in equal payments, and bearing interest at six per cent. per annum, and secured by deed of trust. It is further agreed, that if the said Kerfoot & Co. should fail to comply with the conditions of this agreement, or fail to make payment before the first day of Sept., 1867, then this agreement to be void, and the three hundred and seventy-five dollars, so paid by said Kerfoot & Co., shall be forfeited to me, and retained by me as stipulated damages for the non-fulfillment of said Kerfoot & Co. part of this agreement.

"Dated Chicago, March 19th, 1867.

"W'M M. DERBY. [SEAL.]
"S. H. KERFOOT. [SEAL.]
"J. F. PIERSON." [SEAL.]

117 Your orators, when said memorandum was presented to them by said Derby, objected to the mention therein of $375 00, on the ground that said sum was not to be paid, but the said Derby, then and there, in consideration of certain services which had before then been rendered by your orators for the said Derby, waived the payment of said sum, allowing it to stand as being receipted for in said memorandum, on condition that your orators, in paying the said sum of $4,100 00 before the first day of September, 1867, should pay interest on said sum of $4,100 00; to which condition your orators then and there gave their assent.

And your orators further show that, after the making of said agreement, to wit, on the 17th day of August, A. D. 1867, at said county, they applied to the said Derby, and notified him that they were ready, willing, and anxious, to comply with said agreement in all things on their part, and offered to pay him said sum of $4,100 00, and the interest thereon, and to execute their notes and a deed of trust, to secure the deferred payments, and requested the said Derby to make conveyance of the land so sold by him to your orators; but the said

Derby did not make such conveyance, though he did not then positively decline so to do.

Your orator Samuel H. Kerfoot, was then about to leave home, to be absent for several months in Europe, and so notified the said Derby; but, with a view to having said agreement consummated after your orator Kerfoot should depart, in case such consummation should not occur before then, your orators, on the day last aforesaid, and prior to said interview with said Derby, executed their three notes, to be delivered to the said Derby, of which said notes a copy is hereto attached, marked Exhibit "B," to be taken as a part hereof. Also, for greater convenience in transacting the business, and for other considerations thereto moving your orator Samuel H. Kerfoot, your said orator, on the same day, transferred, assigned, and set over to the said J. Ford Pierson, your said orator Kerfoot's interest in the contract so made by said Derby with your orators, and in the lands aforesaid; and your orator, the said Samuel H. Kerfoot, indorsed on the written agreement, so given by said Derby as aforesaid, an assignment, in the words and figures following, to wit:

"For value received, I hereby transfer and assign to J. Ford Pierson, all my right and title in and to the within document, and the premises therein described, and authorize and request William M. Derby to convey the said premises to said Pierson.

"Witness my hand and seal this 17 day of August, 1867.

"SAM'L H. KERFOOT. [SEAL.]

"Witness:

"FRANCIS I. REID."

And your orators afterwards, to wit, on the 19th day of August, 1867, again applied to said Derby to execute said agreement, and tendered and offered to pay him the sum of $4,270 85, the same being the amount of said $4,100, with the interest thereon, at ten per cent. per annum; and your orators also offered to give said Derby the required notes and deed of trust.

It had been the intention of your orator Kerfoot, to start on his journey prior to the time of his seeing said Derby as last aforesaid, but your said orator had remained, in order to see said Derby again, and have said matter concluded, and your said orator so advised said Derby, who replied that your said orator need not have remained for that purpose. Your orators also exhibited to said Derby the said agreement, and the assignment thereon, and in a friendly manner requested the said Derby to make a deed to your said orator Pierson, in accordance with said agreement and assignment. Your said orator at the same time exhibited the aforesaid notes, together with a deed of trust which had been drawn up and duly executed by your said orator, running to Henry S. Monroe, esq., the attorney in the matter aforesaid of said Derby, a copy of which deed of trust is hereto attached as Exhibit "C."

And your orators, on making said tender, were then and there ready, willing, and anxious to comply with the aforesaid agreement in all respects, as the said Derby then and there well knew; and if the said Derby had found any reasonable fault with the said deed of trust, or requested that the same should run to any other person than the said Monroe, your orators would have corrected such fault, and have executed a trust deed in due form to such other person as the said Derby might have indicated; all which premises were then and there well known to the said Derby. But the said Derby, without declining to execute a deed to your orator Pierson, as so desired, told your orators to see his

attorney, the said Henry S. Monroe, esq., and the business could be attended to; but your orators could not then see said Monroe, and your orator Kerfoot soon thereafter started on his journey aforesaid. And the said Derby thereafter refused to perform said agreement, and made the excuse that said trust deed was not signed by said Kerfoot, but only by said Pierson, to whom the deed from said Derby, under said assignment of said contract, was to run. But your orators show that said Derby did not object to said deed of trust prior to the time of your orator Kerfoot leaving as aforesaid.

118 Your orator Kerfoot, being on the eve of his departure at the time of said application and tender to said Derby, left said notes and trust deed (of which Exhibits "B" and "C" are copies) with said Pierson to enable him to have said agreement executed, and they have since hitherto remained with said Pierson, ready to be delivered to said Derby, as said Derby has well known.

Afterwards, to wit, on the 31st day of August, A. D. 1867, at said county, your orator, the said Pierson, again applied to the said Derby to perform said agreement on his, the said Derby's part, and, on payment of the money which was to be paid him thereunder, to execute a deed either to your orators or to your orator Pierson, taking, at the same time, the notes and deed of trust which were to be given in accordance with said agreement. And your orator, the said Pierson, then and there tendered to the said Derby the sum of $4,285 00 in cash, the same being the cash payment which was to be made to said Derby by the said first day of September, A. D. 1867, according to said agreement, with interest thereon at ten per cent. per annum. And your orator Pierson, at the time of so tendering said money as last aforesaid, to wit, on said 31st day of August, A. D. 1867, offered to give such notes and deed of trust, to wit, the notes aforesaid and a deed of trust in due form, from your orators jointly, in order to satisfy the objection which had been previously made by said Derby that the deed of trust was executed in the name of and by your orator Pierson, alone; your orator Pierson, being then and there fully authorized by a power of attorney from said Kerfoot, in due form of law, to execute such deed of trust for and on behalf of the said Kerfoot, and as his act and deed. And your orator Pierson, thereupon then and there was ready, and offered to give the required notes and deed of trust, and for and on behalf also of said Kerfoot, (your orator Pierson representing said Kerfoot as such attorney in fact,) actually made such deed of trust in the joint names of your orators, and, on tendering said money, exhibited such deed of trust to said Derby, with the notes first aforesaid, copies of which are annexed as Exhibits "B."

And your orators aver that the said Pierson had a full and sufficient power of attorney to enable the said Pierson to execute such deed of trust on the part of said Kerfoot, and also to give notes in accordance with said agreement, and to carry out said agreement fully and effectually in all respects, and that said power of attorney was executed and authenticated in due form of law. Yet the said Derby unjustly, and without cause, refused to execute said agreement on his part, pretending at times that he would give a deed without having his wife join him therein, thus leaving her an inchoate right of dower in the premises, and again pretending that he would require that a deed of trust not only with the signature of your orator Pierson, but also with the individual signature of said Kerfoot, then impossible to get, should be produced, which requirement, on the part of said Derby, was frivolous and unreasonable, and was made as a mere evasion on his part.

And your orators further show that they have always, since the said 17th day of August, A. D. 1867, been ready, willing, and anxious to carry out, on their part, the agreement so made by said Derby with them, and to execute the same fully, by paying the money thereby required, and by giving the notes and deed of trust as therein specified, as the said Derby has at all times well known and understood; and your orators are still ready, willing, and anxious to pay said money, and give the proper notes and deed of trust, and to bring the same into court; but the said Derby has hitherto refused, and still continues to refuse, to take said money, notes, and deed of trust, or any of the same, or to execute said agreement on his part; which refusal on his part is without any good cause or excuse, and has caused your orators great damage and injury, to wit, to the amount of five thousand dollars.

And your orator Samuel H. Kerfoot, as a member of the firm of S. H. Kerfoot & Co., with which said agreement of sale was made by said Derby, continues to be interested with the said Pierson in having the same executed, your orators constituting said firm of S. H. Kerfoot & Co. And therefore your orators join in this proceeding.

And your orators offer to do and perform all things necessary or proper to be done by them to obtain the execution, or entitle them to call for the execution, on the part of said Derby, of his agreement aforesaid.

In tender consideration whereof, and forasmuch as your orators cannot obtain adequate relief at law, but only in a court of equity, wherein matters of this sort are cognizable and relievable, your orators pray your honors to take cognizance hereof, and that the said William M. Derby be summoned and required to answer this bill of complaint, though not on oath, the necessity of his answering under oath being hereby waived; and that, the premises being seen, the said Derby be required specially to execute his agreement aforesaid, and to convey to your orators, or to your orator Pierson, on the terms specified in the aforesaid agreement of said Derby with your orators, one-half of the property which, at the making of said agreement, had been purchased by said Derby of John J. Walker, executor of Arthur F. Hopkins, deceased, to wit, one-half of the property hereinabove described as having been so purchased by said Derby of said Walker, as such executor.

That the written agreement aforesaid between said Derby and your orators be reformed, if necessary, so as to effectuate the true intent and meaning of the parties in the sale aforesaid from said Derby to your orators.

119 Also, that the said Derby be required to pay your orators the damages sustained by them as aforesaid, in consequence of his unjust refusal to perform said agreement; and that your orators may have such other, further, or different relief as shall seem meet.

And, as in duty bound, your orators will ever pray, &c.

And your orators pray that process be issued against the said William M. Derby, according to the statute in such case made and provided.

EXHIBIT "A."

This indenture made the sixteenth day of March, one thousand eight hundred sixty seven, between John J. Walker, as executor of the last will and testament, and as trustee of the estate of Arthur F. Hopkins, late of the city of Mobile, and State of Alabama, deceased, party of the first part, and William M. Derby, of the city of Chicago, county of Cook, and State of Illinois, of the second part, witnesseth: That the said party

of the first part, by virtue of the power and authority to him given in and by said last will and testament, and for and in consideration of the sum of twenty-five thousand six hundred ($25,600 00) dollars, lawful money of the United States of America, to him in hand paid, at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part, his heirs, executors, and administrators, forever released and discharged from the same by these presents, hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents, doth grant, bargain, sell, alien, release, convey, and confirm unto the said party of the second part, his heirs and assigns forever, all the following-described premises, to wit, an equal undivided half part of the first following-described tract of land, known as that part of the northeast quarter of section four, (4,) township thirty-eight, (38,) north of range fourteen, (14,) east of third principal meridian, bounded and described as follows: commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad four rods to the north line of said quarter section; thence east on said line to the place of beginning; also, the whole of the following described pieces or parcels of land, to wit: the east half of block numbered one, (1,) and the east half of block nnmbered six, (6,) and the whole of blocks numbered five (5) and four, (4,) and lots numbered one, (1,) two, (2,) twenty-three, (23,) and twenty-four in block numbered twelve, (12,) all in Pryor and Hopkins' sub-division of the west half of the northwest quarter of section numbered three, (3,) in township and range aforesaid; these lands being now conveyed subject to any rights and privileges now enjoyed by the Union Stock Yard and Transit Company, as touching said premises:

Together with all and singular the edifices, buildings, rights, members, privileges, advantages, hereditaments, and appurtenances to the same belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, claim, and demand whatsoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, and which the said party of the first part hath by virtue of the said last will and testament of, in, and to the same, and every part and parcel thereof, with the appurtenances;

To have and to hold the said premises above mentioned and described, and hereby granted and conveyed, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs, and assigns, to his and their only proper use, benefit, and behoof forever.

And the said party of the first part, for himself, his heirs, executors, and administrators, does covenant, grant, promise, and agree, to and with the said party of the second part, his heirs, and assigns, that the said party of the second part, his heirs, and assigns, shall, and may from time to time, and at all times forever hereafter, peaceably and quietly have, hold, use, occupy, possess, and enjoy all and singular the said hereditaments and premises hereby granted and conveyed, or intended to be, with their and every of their appurtenances, and receive and take the rents, issues, and profits thereof, to and for his and their own use and benefit, without any lawful let, writ, hindrance, molestation, interrogation, or denial whatsoever, of, from, or by him, the said party of the first part, his heirs or assigns, or of, from, or by any other person or persons whomsoever, lawfully claiming, or who shall or may lawfully

claim hereafter by, from, or under him or either of them, or by, from, or under either of their right, title, interest, or estate; and that free and clear, and freely and clearly discharged, acquitted, and exonerated, or otherwise well and sufficiently saved, defended, kept harmless and indemnified by them, the said parties of the first part, their heirs and assigns, of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, mortgages, judgments, and all other charges and incumbrances whatsoever, had, made, committed, exacted, or done by him, the said party of the first part, or by, through, or with his or either of his acts, deeds, means, consent, procurement, or privity.

120 In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

JOHN J. WALKER. [SEAL.]

Executor of the last will and testament of A. F. Hopkins, deceased.

STATE OF ILLINOIS, *Cook County:*

I, Samuel H. Kerfoot, justice of the peace in said county, in the State aforesaid, do certify that John J. Walker, as executor of the last will and testament of Arthur F. Hopkins, deceased, who is personally known to me as the same person whose name is subscribed to the above deed, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this eighteenth day of March, A. D. 1867.

SAMUEL H. KERFOOT,
Justice of the Peace, &c.

EXHIBIT "B."

$2,900 00. CHICAGO, *August* 17, 1867.

On the 19th day of March, 1868, after date, we promise to pay to the order of William M. Derby, twenty-nine hundred dollars with interest at six per cent. p'r an. from and after the 19 day of March, 1867, value received. {The trust deed securing this note has been duly stamped.}

J. FORD PIERSON.
SAM'L. H. KERFOOT.

$2,900 00. CHICAGO, *August* 17, 1867.

On the 19 day of March, 1869, after date, we promise to pay to the order W'm M. Derby, twenty-nine hundred dollars with interest at six per cent. p'r an. from and after the 19 day of March, 1867, value received. {The trust deed securing this note has been duly stamped.}

J. FORD PIERSON.
SAM'L H. KERFOOT.

$2,900 00. CHICAGO, *August* 17, 1867.

On the 19 day of March, 1870, after date, we promise to pay to the order of W'm M. Derby twenty-nine hundred dollars with interest at six per cent. p'r an. from and after the 19 day of March, 1867, value received. {The trust deed securing this note has been duly stamped.}

J. FORD PIERSON.
SAM'L H. KERFOOT.

EXHIBIT "C."

This indenture made this seventeenth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, (1867,) between J. Ford Pierson, of Chicago, Cook County, and State of Illinois, party of the first part, and Henry S. Monroe, of said Chicago, in the county of Cook, and State of Illinois, party of the second part, witnesseth:

Whereas Samuel H. Kerfoot and said J. Ford Pierson, of said Chicago, are jointly and severally indebted to Wm. M. Derby, of said Chicago, in the principal sum of eighty-seven hundred ($8,700) dollars, secured to be paid by their three promissory notes, of even date herewith, and due respectively, each for the sum of twenty-nine
121 hundred ($2,900) dollars, with interest at six (6) per cent. per annum, from and after the nineteenth day of March, 1867, on the nineteenth day of March in each of the years 1868, 1869, and 1870, being for part of the purchase price of the premises covered and conveyed by this deed of trust as hereinafter set forth.

Now, therefore, the said party of the first part, in consideration of the premises, and the further consideration of one dollar to him in hand paid by said second party, the receipt whereof is hereby confessed, has, and hereby does grant, bargain, sell, and convey unto said party of the second part, his heirs, assigns, or successors in trust, forever, all the premises situate in the county of Cook, and State of Illinois, and known and described as follows, to wit: An equal undivided half part of the following-described premises, to wit: The east half of blocks numbered one (1) and six (6,) all of blocks numbered four (4) and five (5,) and lots numbered one (1) and two (2,) twenty-three, (23,) and twenty-four (24) of block numbered twelve (12,) all in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section three, (3,) township thirty-eight (38) north, of range fourteen (14) east of the 3d p. m.; and the undivided half of that part of the northeast quarter of section four, same township and range, described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four rods, (74;) thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad seventy-four rods (74) to the north line of said quarter section; thence east to the place of beginning, being the same premises this day conveyed to said Pierson by quitclaim deed of said Derby and wife, and being in no wise built upon or occupied as the homestead of the grantor.

To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, unto the said party of the second part, his heirs, assigns, or successors in trust, hereinafter named, forever, in trust, nevertheless, to wit: In trust, that in case of default in the payment of the said notes, or either of them, or any part thereof, or in case of a breach of any of the covenants or stipulations herein contained, then, on the application of the legal holder of said notes, or any or either of them, it shall and may be lawful for the said party of the second part, his heirs, assigns, or successors in trust, to enter into and upon all and singular the premises hereby granted, or any part thereof, in the name of the said second party; to receive all rents, issues, and profits thereof, and to sell and dispose of the said premises, and all the right, title, benefit, and equity of redemption of the said party of the first part, his heirs or assigns therein, at public auction, at the north door of the court-house in said Chicago, in the State of Illinois, for the highest and best price the same will bring in cash, thirty (30) days' public notice having been previously

given of the time and place of such sale, by advertisement in one of the newspapers at that time published in said city of Chicago daily; to adjourn such sale from time to time, as may be thought expedient, and to make, execute, and deliver to the purchaser or purchasers at such sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds or avails of such sale, after first paying all costs of advertising and sale, commissions, and all other expenses of this trust, including all moneys advanced for taxes or other liens or assessments, with the interest thereon, to pay the principal and interest due on said notes, according to the tenor and effect thereof, or to the said Derby or Monroe, in case he or they shall have paid the same, rendering the overplus (if any) unto the said party of the first part, his legal representatives or assigns, on reasonable request; and it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the said purchase money; which sale or sales so made, shall be a perpetual bar, both in law and equity, against the said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or any of them.

And the said J. Ford Pierson, for himself, his heirs, executors, and administrators, covenants and agrees to and with said party of the second part, legal representatives or successors in trust, that, until said indebtedness is fully paid, or said premises are sold by virtue hereof, he will pay all taxes and assessments thereon, when and as the same become due and payable.

And it is stipulated and agreed, that in case of default in any of said payments of principal or interest as aforesaid, of a breach in any of the covenants or agreements herein, then, and in that case the whole of said principal sum hereby secured, and the interest to the time of sale, according to the tenor and effect of said indebtedness, may at once, at the option of the legal holder thereof, become due and payable, and the said premises be sold in like manner, and with the same effect as if the said indebtednes had matured; and further, that in case of the death, resignation, removal from the said Chicago, or other inability to act, of said party of the second part, then John J. McKinnon, of the said Chicago, shall be, and hereby is, appointed and made the successor in trust herein, with like power and authority as the said party of the second part hereby has, in and about the management of the said trust estate, and the said premises shall become vested in such new trustee accordingly.

In witness whereof the said party of the first part hereunto set hand and seal the day and year first above written.

J. FORD PIERSON. [L. S.]

Signed, sealed, and delivered in presence of—

——— ———.

122 STATE OF ILLINOIS,
Cook County, City of Chicago, ss:

I, Cornelius Van Schaack, a notary public in and for said city, in said county, in the State aforesaid, do hereby certify that J. Ford Pierson, who is personally known to me as the person whose name is subscribed to the within trust deed, as having executed the same, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument of writing, as his free and voluntary act, for the uses and purposes described in said trust deed, and expressly

waived and released all right, claim, benefit, privilege, advantage, and exemption under any and all homestead exemption laws, so called.

Given under my hand and notarial seal this nineteenth day of August, in the year of our Lord one thousand eight hundred and sixty-seven.

[NOTARIAL SEAL.] CORNELIUS VAN SCHAACK,
Notary Public.

123 EXHIBIT "B."—*Referred to in and made a part of the foregoing amended bill.*

STATE OF ILLINOIS,
Cook County, ss:

J. Ford Pierson, being duly sworn, says that an agreement was made by and between William M. Derby, of the one part, and S. H. Kerfoot and this affiant, of the second part, dated the 19th day of March, 1867, by which said Derby, for valuable consideration paid and to be paid, agreed to sell and convey to said S. H. Kerfoot and affiant one-half of the property purchased by said Derby of John J. Walker, executor of Arthur F. Hopkins, deceased, said property being known and described as follows, to wit:

The undivided half of the east half of blocks numbered one and six, the whole of blocks numbered four and five, and lots numbered one, two, twenty-three, and twenty-four, of block twelve, all in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section three, township thirty-eight, north of range fourteen, east of the third principal meridian, and the undivided half of that part of the northeast quarter of section number four, township thirty-eight, north of range fourteen, east of the third principal meridian, described as follows: commencing at the northeast corner of said quarter section, running thence south seventy-four rods; thence west to the east line of the Chicago & Rock Island Railroad; thence north, on east line of said railroad, seventy-four rods, to the north line of said quarter section; thence east, on said north line, to the place of beginning.

And affiant states that said Kerfoot and himself were to pay said Derby $4,100 in cash, before the first day of September, 1867, and executed notes for $8,700, balance of the consideration, payable in one, two, and three years, in equal payments, bearing interest at six per cent. per annum, secured by trust deed.

And affiant states that said Kerfoot assigned all his interest in the said agreement and the land therein mentioned to the affiant, by writing on the back of said agreement.

And this affiant further states that, before the first day of September, 1867, full compliance with all the covenants in said agreement contained to be performed by said S. H. Kerfoot and affiant was offered and tendered to said Derby, and a conveyance of said lands by said Derby, in compliance with his covenant, demanded.

In witness whereof J Ford Pierson has hereunto set his name, this 3d day of September, 1867.

J. FORD PIERSON.

Subscribed and sworn before me, by J. Ford Pierson, the third day of September, 1867.

[NOTARIAL SEAL.] GWYNNE GARNETT,
Notary Public.

[Rev. stamp, 5-cts.]

EXHIBIT "C."—*Referred to in and made a part of amended bill.*

OFFICE OF WALKER & BARNEWALL,
Mobile, Ala., 24th Feb., 1868.

S. H. KERFOOT, *Chicago, Ills.*

DEAR SIR: I wish you would send me, by express, the deed from Derby to Mrs. Walker to the Madison-street property which was left with you for record. State what taxes or expenses, if any, you have paid on the property; be good enough likewise, to inform me if there has been any improvement in the value of that property since last spring, and what you advise as to the policy of holding or selling.

You remember that last spring I reported to you promptly the contents of a letter I had received from Mr. Pryor, in which he expressed great surprise at the sale you had made for me to Derby of the Hopkins' estate property, it being at a price so much below what he had been offered for his; your explanation of the matter, as I understood from you, was entirely satisfactory to Mr. Pryor, from whom you subsequently negotiated the sale of his land. I reported Pryor's letter from a sense of justice to you, and from the same motive I now deem it my duty to say, that it has recently been intimated to me, in a way which debars me from mentioning the source of the information, that at the time you made the sale to Derby for me, you had an offer of $200 per acre more from another party; and furthermore, that you were a joint purchaser with Derby of the Hopkins' property.

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If I represented my own interest alone, I should not annoy you with any notice of such a report, but as I represent a number of heirs to the estate who might hereafter be approached on the subject, and censure me for ignoring it, I deem it due to myself and to you to make this communication and to request a reply.

Yours truly,
(Signed) JOHN J. WALKER, *Ex., &c.*

see p 142

125. EXHIBIT "D."—*Referred to in and made a part of amended bill. "Pryor & Hopkins'" subdivision, &c.*

The portions marked in red were Hopkins' estate. The portions marked in blue were Pryor's land. The portion between the irregular lines is slough.

126 CHICAGO, *February* 29, 1868.

JNO. J. WALKER, Esq., Ex'r, etc., *Mobile, Alabama.*

DEAR SIR: Your favor of the 24th inst. came duly to hand and would have been answered at once, but that I had not the time to write such a reply as I desire to send you, and as the letter and its subject merit.

Enclosed you will please find, in accordance with your request in your letter, the deed from Messrs. Monroe and others to you of the land west of the city, which you took in part payment of the notes given you by Derby on his purchase south of the city.

The deed, by the endorsement, is recorded, book 401, page 447, and was handed us by the recorder in accordance with what you told us, when here, would be done.

It was not filed for record by us. It was filed for record by Mr. Monroe, as you told us it would be.

You left it with him, and not with us, to record.

You have no taxes for 1867 to pay on the land conveyed by this deed. It was made to you after the 1st of May, and the owner on that day pays the taxes of the current year.

We will, however, see that they are paid so as to void a tax sale.

Your land there has, as all real estate in or about Chicago has, increased in value and saleability very greatly; so much so, that I do not know but that it might now bring the price at which Derby estimated it (but which I told you was an exorbitant one) when you took it from him with the $10,000 cash he paid you for the notes.

The transmission now of the deed to you, the announcement that you have no taxes of 1867 to pay, and the report with regard to the improvement in your land, I believe, answer the less important parts of your letter, and I now addressed myself to those more so, and say:

1st. We never had any "offer," from any person whatever, of $200 per acre, or any more than you received for the land of the Hopkins' estate here sold Derby.

2d. Neither I, my partner, or my firm, had any interest in the purchase of that land from you.

These answers are designed to be conclusive and unevasive. I will put them in any other shape you may desire, provided they deny in toto the allegations made against me or my firm in this matter.

And now, having made these concise answers, let me make here a record of the history of that whole transaction, and let me very kindly, but very positively, require that you make a prompt and full investigation as to the whole thing, and the connection of myself and firm with it, in order that you may be able to say to your own mind, and to those persons for whom you acted, that you have done so, and tell them the conclusion you may arrive at.

The position of a resident agent and broker is one very nearly, if not quite, impossible to maintain through a series of nearly sixteen unbroken years without having incurred the ill-will of some resident purchasers and speculators, and even of some non-resident principals; but I stand to-day, and am willing to stand, on the record of those years, and abide by the general verdict for my honesty and integrity.

You have only done your duty to yourself, to those for whom you acted, and to me and my firm, in frankly, and I hope promptly, conveying to me the insinuations or charges which were made.

I have much pleasure in thanking you for your uniform courtesy, and especially as now evinced in your method of communicating these points to me.

You came here in February, 1867, and made known your desire to sell the property for cash. You and we thought of no other terms.

Your only object in selling was to realize money, with which to save and protect some Mobile property. You and I drove down and saw the land. You remember the day and the weather. It was a com-
127 paratively mild day, and yet we were both terrerribly chilled. We examined the slough land west of State street, of which you controlled ten acres. We saw the southwest block of yours, south of the cattle tract and farthest from the avenues, with regard to which Mr. Pryor afterwards said when he saw it with me, when he was out, "By George, if I had known that was in it, I would never have bought the 80 acres," and yet that block went to Judge Hopkins in the partition, and was part of the land sold to Derby. We could not drive straight over; we went around by the other block, when you said, "Let us go home, or we will freeze."

We came home; we talked the matter over. I told you "not to sell if you could help it; at least to keep the land till the grass could be green on it."

You remember I told you "outside property was dull, cash customers were scarce, and I could not advise a sale at that time." You said, in answer, that "the question was simply between keeping this unproductive property and losing the producing property at Mobile, or the converse of the proposal." I told you "that was a matter with regard to which you alone, and not I at all, could judge," but "I knew that any sale then, and especially one for cash, would be difficult."

You will remember that this whole ground was gone over thoroughly; you then ordered, by my advice, the abstract. You desired to know the status of the property, sale or no sale. While this was being made, the weather was intensely cold. You staid in the hotel very closely. I proposed that we should again drive to the land, and take another look at it. You replied to the effect, "that you would scarcely drive there in that weather for the land." If so with you, how much more difficult to have got purchasers to have driven there.

The result of our various talks concerning, and digestings of the matter was:

1st. That it should be sold.

2d. That we should ask $1,000 per acre.

3d. That the whole should be sold together, not separating the desirable portion east of State street from the undesirable part (the undivided half of twenty acres, much of it slough,) west of State street.

4th. That as money alone was your object, we should require cash.

These things being determined upon, we began to talk of a customer likely to have the money and willing to purchase.

Derby was the only one whom I thought of. I mentioned his name to you, and told you I knew he had just sold a place for $45,000, and that he probably could handle it if he was disposed to do so.

I prepared you for the man; I told you what kind of a trader he was. You know that I met promptly, all of the time of our trading, his specious pleas, and once or twice you and I came very near concluding that we would not trade with him. I think I was more indignant than you at his games, and I imagine that your subsequent intercourse with him proved the correctness and necessity of my warnings to you regarding him. You will also remember that on the day you signed the deed, I had quite a warm time with him, and only brought him to terms by telling him "that if he pressed his last rude point of your being identi-

fied as the John J. Walker, the executor," etc., I would break up the trade and he should not have the property.

You remember we both came to the conclusion that he wanted to back out of the trade as regarded the property west of State street, etc., and I said he should take all or none. You feared at one time he would not buy, and I think you would have come to his idea unless I had insisted on his taking all. I knew that to take the east of State street away from the west of it would take the cream away.

When your mind is led back by these remembrances to the transaction, does it look to you as if I acted like one being a joint purchaser with Derby?

I endeavored to have you not sell, to keep the land till spring, and when you determined to sell, I got the only man I knew of that had the money and was willing to buy, and during the long tedious trade I thwarted him at every point and did my utmost to meet his plans.

128 Does it seem probable—does it seem possible, that I had any interest in the purchase from you?

We spoke to several persons during the negotiations; you spoke to Mr. Gage, to whom you had letters; you told me that he advised you to wait till spring. But the only person besides Derby who intimated to us any willingness to purchase was a Mr. Martin Andrews, who had purchased some property east of yours and on the margin of the grove.

He came into the office and said he was going away that afternoon to Ohio. I wanted him to meet you. He declined, because that he had no time, and was not prepared to speak definitely then of it.

He said these things:

1st. "He would not purchase that part west of State street, at all." I told him you wanted to sell all.

2d. "He would pay only quarter cash, and the balance in three equal annual payments, with 6 per cent. interest." I told him you wanted cash.

3d. "He would not pay more than $1,000 per acre, even for the portion east of State street, for he had purchased, not over a year before, much better property at $500 per acre."

4th. And "all this depended on whether his brother-in-law would be able and willing to raise the quarter cash when he (Andrews) reached Ohio."

The negotiations with Mr. Andrews were just of this kind, and no more definite. I remember distinctly of telling you of his talk, but neither you nor I deemed the matter of any moment, for we then had no idea of selling on time. We asked all cash.

Derby's proposals and counter proposals, alone brought about the terms finally agreed upon, and when you did accede to the proposal of his which was accepted, or he to yours, I do not know which, it was done so that I scarcely knew it till it was done, and you at once proposed that the bargain be reduced to writing. It was then and there done, March 6th.

How long Mr. Andrews was gone I do not know. Some time after you left he returned, and in conversation regarding the land, we told him that the property was sold. He complained somewhat, and said that he had asked Mr. Pierson "to write him before the property was sold."

Now if he did ask anything of the kind we do not remember, but you can see how advisable it would have been from the inducements his indefinite talk gave us, and how perfectly possible it would have been

to have stepped in when you and Derby had concluded your long negotiations, and have said, "Hold on till we write to Ohio and see if Mr. Andrews will not give this price, or a better one, and on these terms, or better ones."

This is the whole and absolutely the unvarnished history of Mr. Andrews' negotiations touching thing. I dwell upon it as he was the only person who talked at all of buying, and this may be the basis of the "$200 per acre more," idea.

Now as to Mr. Pryor's operations, you say that "your (my) explanation of the matter" [i. e. your sale to Derby at a figure so much below that offered Mr. Pryor for his land] "as I understood from you was entirely satisfactory to Mr. Pryor."

Of course, we had no "explanation" to make Mr. Pryor, nor did we make any for the purpose of "satisfying" him.

We said nothing to him of your letter (which arrived the day he did) until he had, with his usual shrewd, quiet, penetrating, and investigating method, tried the whole market and every real estate office in town.

We knew that he was doing this, and that he was having visitors at the hotel. He was betting on the "Park question." He was here the day of the "Park vote." "He was sure he would, if the Park succeeded, get his $1,500 per acre." No one offered it, however. His purchaser, whoever he was, that had offered him $1,500, and was so keen to buy, did not appear. The Park failed. Mr. Pryor could find no one to buy at all.

129 Derby, the inevitable Derby, then came forward and offered to take it and trade him some lots on Michigan avenue at $170 per foot. We told Mr. Pryor not to trade. The lots were not worth over $135 per foot. But Mr. Pryor had tried the market, of course could do no better, and did trade with Derby, and sold him (for Derby would take only) what he had north of the cattle yard railroad track, the very cream of the whole subdivision, as marked on the map.

He sold him 14⅓ acres for nominally $20,000, being thus nominally $1,395 per acre, payable, eight thousand five hundred dollars in other real estate, which real estate we sold for Mr. Pryor while I was in Europe, Sept. 23, 1867, for $1,750 less than he allowed for it; Mr. Pryor paying us $243 75 commissions for selling it, in addition to the commission that he paid on the same when it was included in the $20,000; $397 25 special assessments for improving Michigan avenue, and $26 05 abstract, etc., losing the interest on $8,500 for six months—for he had received it from Derby as cash—and taking his pay for it at the low price he had to sell it at, as follows: $2,250 cash and the balance on or before one and two years with interest at eight per cent. For the balance of the purchase price, after deducting $8,500 from $20,000, Derby paid Mr. Pryor $3,833 33 cash and the balance in one and two years with interest at 6 per cent.

Thus, even laying aside the difference in actual value between Pryor's land sold to Derby, and yours sold to him, we find:

He received nominally		$1,395 per acre.
Less loss on real estate	$1,750 00	
extra commissions	243 75	
special assessments	397 25	
items—abstract, etc.	26 05	
interest on $8,500, 6 months, 8 per cent	340 00	
Total loss on 14⅓ acres	$2,759 00—	$195 per acre.
Net price		$1,200 per acre.

Real estate having gone up in the past few months very much, Pryor's lots that he sold for $135, would now bring $200 per foot. Now, you sold what you claimed to be 31 acres, but really not more than 28 or 29, less taken by the railroad 1.563 acres, for which you received cash $1,450 40, leaving $29\frac{4}{7}$ acres at your estimate, for which you received $25,600, being a trifle short of $875 per acre, at 31 acres estimate.

Now the difference in the intrinsic value of Pryor's land over yours, is shown in the pro-rata increase, up to the present time, in value of his over yours. His will sell for more than double what he got for it; yours will not begin to.

If you made a mistake in selling, he made a most egregious error.

He came here after the excitement began. He had an exalted idea of its value, and so talked to you, and yet he sold his choice land there for $1,200 per acre.

Now in order that you and your coöwners may understand the thing exactly, as regards location, etc., you here find embodied in this document a diagram of the plat of Pryor & Hopkins' subdivision, and of the land west of State street.

Of course, the land nearest the city, north of the cattle yard railroad track, and again that most eastern, and hence nearest the lake shore, is better than that further from the city, south of, or beyond, the cattle yard railroad track, and that farther from the shore, and hence most western.

Indiana and Michigan avenues are best, Wabash next, and State street, on the east side, next. West side of State street, and that lying west of State street nothing like so desirable.

Now look at the map. You see that you sold only one-half block lying north of the cattle yard railroad track, all the rest being south of the railroad track, of which there was one front on Indiana avenue, one on Michigan, two on Wabash and one on State street. The two Wabash and one State street being miserable sloughs.

You also sold ten acres, being an undivided half of twenty acres, all lying west of State street, and half or more of it being almost irredeemable slough.

130 Again, bear in mind that in all your estimates of area you included land condemned and taken by the railroad for a track, for which you drew the money allowed as damages, but left the land damaged in value.

Now, sir, look at the map and say, taking all things into consideration, if you did not do as well as, nay, I think better than, Mr. Pryor did.

His was beautiful land, all north of the track, save one-half block; no slough at all, but perfectly dry, and all on Michigan and Wabash avenues.

Yours was what you saw it to be, and what we have described it as.

You have realized the greater part of yours cash, the balance being where it will be forthcoming to you at par, I think, as soon as Mr. Pryor's will probably be paid to him, even after his trading and turning.

After, not before, Mr. Pryor had fully tried the market, and had traded with Mr. Derby, we showed him your letter of April 4th, 1867, to us. He went over the ground with us, and, of course, said what we reported to you in our letter of April 11th, same.

He could say nothing else. He had done his best, and that best was no better than you had done. We did not ask him to endorse our action. We did not desire any sanction from him. We only wanted to show him that he had misled you, if he had not disturbed you.

And now, as I desire this document to be exhaustive of this subject, and conclusive upon it, and one to be filed away and preserved by you for purpose of your future reference, and justification, if necessary, I will give you what doubtless has been misconstrued or misused by some one maliciously disposed, or perhaps mad because he was not fortunate enough to purchase this land, or whose ill-will we have in some way incurred, and who thus stabs us behind our back.

A few days after you left Derby came into office, and (whether serious or not I do not know) began complaining of the bad trade which we had led him into. "The land was half a damned slough," etc. We asked him if he would sell us half at the price he paid. He said he would if we would give him *him* half of the commission we had received. We said we would, and we at once drew a rough memorandum, which he could not refuse to sign. We had time in which to make the cash payment till September 1st. We do not think he dreamed we would take him up; but we did.

The year past has made most wonderful changes, and, though my partner tendered him the payment August 31st, while I was gone, he refused to live up to his contract, and so does to-day. We have never received an inch of the land. But whether we had or not, we had no interest at all in the land, or the purchase beyond our commissions at the time of the sale.

I know of nothing more that I can say than that, having thus elaborately gone over the whole ground, and having had my reply copied, so as to spare you the pain and annoyance of wading through my nervous handwriting, will you do me the favor to answer me as promptly as your examination of this thing will justify, and, at the same time, now in fuller justice to myself and my firm, tell me who your informant is, and to whom are we indebted for such kindness?

I think we are entitled to this information.

Perhaps I should have mentioned to you what is doubtless the main cause of the great local advance in the value of the property in the neighborhood of yours, viz: the establishment and erection, since you were here, of the extensive machine shops of the Rock Island and Pacific Railroad, to cost something like, it is said, a million and a half dollars. While I think the benefit to arise from this is over estimated, the public do not; and great value is attached to this, as it is said that these shops will furnish employment for over 1,000 men.

In connection with this, I ought to state also that the Horse Railroad Company agreed last fall to extend their railroad track for the accommodation of these shops; and also that the supporters of the great park have appealed to the courts with a fair chance of success.

I mention these things to show why speculation has begun in that vicinity.

Had you followed my advice and kept this land, you, and not Derby, would have reaped the benefits.

The length and completeness of this letter are my excuses for its delay.

Truly, &c.,

S. H. KERFOOT.

131 EXHIBIT "E."

OFFICE OF S. H. KERFOOT & CO.,
REAL ESTATE AND LOAN BROKERS,
Chicago, Aug. 31, 1866.

JNO. J. WALKER, Esq., of
Messrs. WALKER & BARNEWALL, *Mobile, Ala.*

D'R SIR: We have a letter from Mr. Pryor, giving us the numbers of the lots belonging to the estate of Judge Hopkins. We accordingly send with this a small map of the city of Chicago, with an attachment to it, showing the lands.

By Mr. Pryor's letter, Judge Hopkins owned

No. 1, east half of block one, (1,) Pryor & Hopkins' sub'n.
No. 2, east half of block six, (6,) " "
No. 3, whole of block four, (4,) " "
No. 4, whole of block five, (5,) " "
No. 5, lots 1, 2, 3, and 24, block twelve, (12,) Pryor & Hopkins' sub'n.
No. 6 also, undivided half of 20 acres in sec. 4, 38, 14, across the street from Pryor & Hopkins' sub'n.

Now, in Pryor & Hopkins' subdivision, including the streets in front of the lots, so that the measurement being made of lots on both sides of the streets, the whole area of the surface of the street is included, the following is the exact statement of the contents of Judge Hopkins' property:

No. 1, $3\frac{318}{1000}$ acres, but without streets, 2.518 ac.
No. 2, $3\frac{318}{1000}$ " " " " "
No. 3, $6\frac{636}{1000}$ " " " 5.036 "
No. 4, $6\frac{636}{1000}$ " " " 5.036 "
No. 5, $1\frac{348}{1000}$ " " " about 1.000.
No. 6, of course 20 acres, including streets. A large deduction, about in like proportion with the above for streets.

Now, these properties, including streets, are worth, as we wrote Mr. Pryor, about $1,000 p'r ac. He declines to sell at this. We perhaps could get more, say $1,200 per acre, but this is the extent.

I now await y'r farther commands.

Truly, &c.,

S. H. KERFOOT.

EXHIBIT "F."

OFFICE OF S. H. KERFOOT & CO.,
REAL ESTATE AND LOAN BROKERS,
Chicago M'ch 19, 1867.

To JNO. J. WALKER, Esq., EXECUTOR, &C.,
Sherman House, Chicago.

D'R SIR: I do not deem it at all necessary, but as I proffered this note to you, I send it to you.

I deem the sale made by us to W'm M. Derby of the land of the estate of the late Judge A. F. Hopkins a very fair one, and one the best that probably could have been made, especially in bulk, making the whole at once of avail to the estate in cash and secured notes, at interest. To have retailed the property would have made it yield more, but this w'd have involved several elements, which might have worked well, and might have operated disadvantageously. For instance, parts of the

land are bad slough, which, separated from the high and desirable portions, would have remained on your hands, and have sold for a very low figure. Again, the saleable portions would have gone to numerous and various purchasers, the money have come into your hands in driblets, and have been distributed over a length of time, perhaps accomplishing y'r ends, and perhaps not.

132 Y'r sale, as you know, was made on the basis of the whole area, including streets, railroads, &c. How much land, net, was sold my letter of August 31st, 1866, will shew you.

I do not suppose y'r action in behalf of y'r cestui que trusts needs any endorsement, but if it will be of any service to you, or in any particular gratify you, you have this for such use as you may deem proper.

Truly, &c.,

S. H. KERFOOT.

EXHIBIT "G."

OFFICE OF S. H. KERFOOT & CO.,
REAL ESTATE AND LOAN BROKERS,
Chicago, Ap'l 11, 1867.

JNO. J. WALKER, Esq., *Mobile, Ala.*

D'R SIR: I am much indebted to you for your frank letter of 4th April inst., and w'd have answered it at once on its receipt, but I desired, as Mr. Pryor arrived here on the morning it came, to have him try the market.

I drove with Mr. P., on a lovely day, (9th inst.,) to the property, and his examination of the west side (of State st.) undivided interest, and of the whole block on the east side of State st., both such swamps that Mr. Pryor exclaimed, "By George, if I had known that was so bad I w'd never have purchased it. Judge Hopkins and I divided without reference to the swamp." Mr. Pryor, on examination, agrees with me that, under the circumstances, taking the swamp, the undivided interest, the fact that ten acres lie west of State st., &c.—under all these circumstances, and the sale being to one person in bulk, you did well.

Mr. Pryor's offers, or, rather, the offers made to him, of $1,500, were made, as we think, by Mr. Walker, a former president of the horse railroad, but who was displaced for his speculative turn, and who has now left Chicago. The offers are not now repeated by Mr. W., of course, as he is not here. We will see if any one will repeat them. Should it be done, it will be for the comparatively small portions Mr. Pryor has, all north of the railroad, all high and dry, and all entirely free from swamp, and east of State street, and no undivided interest.

The portions he now proposes to sell are all much better than the average of the Hopkins property; better than the best, except the one-half block north of the railroad—3½ acres out of the 32 acres.

Truly, &c.,

S. H. KERFOOT.

133 EXHIBIT "H."—*Abstract of exemplifications of record, referred to in and made a part of the foregoing amended bill.*

John J. Walker, executor of Arthur F. Hopkins, dec'd, to William M. Derby.

Special warranty deed. Dated March 16, 1867. Consideration $25,600. Conveys that part of und. ½ N. E. ¼ sec. 4, 38, 14, bounded as follows:

Commencing at N. E. corner of said ¼ sec.; running thence S. 74 rods; thence W. to E. line of C. & R. I. R. R.; thence N. on E. line of said R. R. 74 rods, to N. line of said ¼ sec.; thence E. on said line to place of beginning.

Also the whole of the following:

E. ½ bl'k 1; E. ½ bl'k 6; bl'ks 5 and 4, and lots 1, 2, 23, and 24, bl'k 12, all in Pryor & Hopkins' subd'n of W. ½, N. W. ¼ sec. 3, T. and R. aforesaid.

Acknowledged March 18, 1867.

Filed for record March 19, 1867.

Recorded in book 379, p. 466.

William M. Derby to Henry S. Monroe, trustee, &c.

Trust deed. Dated March 16, 1867. Recites indebtedness to John J. Walker, as executor of Arthur F. Hopkins, deceased, of $537 50 (?) secured to be paid by three notes of said Derby, payable to the order of said Walker, each for $1,812 50, and due respectively on or before March 18, 1868, 1869, and 1870, with six per cent. interest, at office of S. H. Kerfoot & Co., in Chicago, being for part purchase money; to secure same, conveys undivided ½ of the 20 acre tract in the N. E. ¼ of sec. 14.

Acknowledged March 18, 1867, before Kerfoot, J. P.

Filed for record March 19, 1867, and recorded in book 379, p. 468.

William M. Derby to Henry S. Monroe, trustee, etc.

Trust deed. Dated March 16, 1867. Recites indebtedness to John J Walker, executor, etc., of $11,962 50, secured to be paid by the three notes of said Derby, payable to the order of said Walker, each for $3,987 50, and due respectively on or before the 16th day of March 1868, 1869, 1870, with interest at six per cent., at the office of S. H. Kerfoot & Co., being for part purchase money; to secure same conveys E. ½ B. 1, and E. ½ B. 6, the whole of B. 4 and 5, and lots 1, 2, 23, and 24, in B. 12, Pryor & Hopkins' subdivision, etc.

Acknowledged before Kerfoot, J. P., March 18, 1867.

Filed for record March 19, 1867.

Recorded in book 380, p. 372.

134 William M. Derby to Samuel H. Kerfoot and J. Ford Pierson.

Agreement. Dated March 19, 1867. Consideration, $375 00. Agrees to sell and quitclaim, at any time before Sept. 1, 1867, one-half the property purchased by Derby of John J. Walker, executor, etc., Kerfoot & Co. to pay cash $4,100, and $8,700 in one, two, and three years, in equal payments, with interest at six per cent., and secured by deed of trust. In case of failure on part of Kerfoot & Co. to make payments before Sept. 1, 1867, the agreement to be void, and the $375 00 to stand as stipulated damages.

Not acknowledged.

Filed August 31, 1867.

Recorded book 404, p. 292.

Maria Walker, and John J. Walker, her husband; Mary M. Barnewall, and W'm Barnewall, her husband; Kate E. Oliver, and Starke H. Oliver, her husb'd; Cornelia C. Lowe, and Henry A. Lowe, her husband; Augusta H. Rice, widow; William L. Hopkins, bachelor, the sole and only surviving heirs of Arthur F. Hopkins, dec'd, and Juliet A. Hopkins, widow of Arthur F. Hopkins, dec'd, to William M. Derby.

Q. C. Deed. Dated March 16, 1867. Consideration, $5 00. Conveys same property as in executor's deed above.
Acknowledged in May, 1867.
Filed for record June 4, 1867.
Recorded in book 391, p. 321.

Samuel H. Kerfoot to J. Ford Pierson.

Assignment of Kerfoot's interest in the last preceding agreement, "for value received."
Dated August 17, 1867.
Not acknowledged.
Recorded same day.

William M. Derby to Samuel Wing.

W. Deed. Dated August 1, 1868. Consideration, $30,000. Conveys B. 4, in Pryor & Hopkin's subdivision.
Acknowledged August 3, 1868.
Filed for record August 3d, 1868.
Recorded in book 471, p. 23.

135 Samuel Wing, (bachelor,) of Chicago, to Henry S. Monroe, trustee, etc.

Trust deed. Dated August 1, 1868. Recites indebtedness to Derby of $14,000, secured to be paid by two notes of even date, each for $7,000, and due and payable at office of said Derby, in Chicago, in one and two years respectively, with interest at eight per cent. payable semi-annually, being for part purchase money. To secure same, conveys B. 4, in Pryor & Hopkins' subdivision, etc.
Acknowledged August 3, 1868.
Filed for record August 3, 1868.
Recorded in book 471, p. 25.

William M. Derby, and Frances W., his wife, to Alonzo Rawson, of Louisville, Ky.

W. deed. August 5, 1868. Consideration, $86,000. Conveys all of B. 6 and E. ½ of B. 5, Pryor & Hopkins' subdivision, etc. Also, undivided ½ of that part of sec. 3 (20-acre tract) subject to all taxes subsequent to 1867.
Acknowledged September 8, 1868.
Filed for record September 9, 1868.
Recorded in book 481, p. 531.

Alonzo Rawson to Henry S. Monroe, trustee, etc.

Trust deed. Dated August 5, 1868. Recites indebtedness to Derby of

$20,000, secured to be paid by two notes of even date, each for $10,000, and payable at the office of said Derby, in one and two years respectively, with interest at eight per cent., payable semi-annually, and at 10 per cent. after due, being for part purchase money. To secure same, conveys the undivided ½ of that part of sec. 4 (20 acre tract.)
Acknowledged September 9, 1868.
Filed for record September 9, 1868.
Recorded in book 466, p. 610.

Alonzo Rawson to Henry S. Monroe, trustee, etc.

Trust deed. Dated August 5, 1868. Recites intebtedness to Derby of $9,000, secured by his two notes of $4,500 each, of even date, and due and payable in one and two years respectively, with interest at eight per cent., payable semi-annually, and ten per cent. after due, at the office of said Derby, in Chicago, being for part purchase money. To secure same, conveys E. ½ B. 6, in Pryor & Hopkins' subdivision, etc.
Acknowledged September 9, 1868.
Filed for record September 9, 1868.
Recorded in book 466, p. 613.

136 Alonzo Rawson to Henry S. Monroe, trustee, etc.

Trust deed. Dated August 5, 1868. Recites indebtedness to Derby of $11,000, secured to be paid by his two notes of even date, each for $5,500, and due and payable at the office of said Derby, in one and two years after date respectively, with interest at eight per cent., payable semi-annually, and ten per cent. after due, being for part purchase money. To secure same, conveys E. ½ B. 5, in Pryor & Hopkins' subdivision, etc.
Acknowledged September 9, 1868.
Filed September 9, 1868.
Recorded in book 466, p. 616.

Alonzo Rawson to Henry S. Monroe, trustee, etc.

Trust deed. Dated August 5, 1868. Recites indebtedness to Derby of $10,000, secured to be paid by his two notes of even date, for $5,000 each, and due and payable at the office of said Derby, in one and two years after date respectively, with interest at eight per cent., payable semi-annually, and ten per cent. after due, being for part purchase money. To secure same, conveys W. ½ of B. 6, in Pryor & Hopkins' subdivision, etc.
Acknowledged September 9, 1868.
Filed for record September 9, 1868.
Recorded in book 406, p. 419.

Alonzo Rawson to Henry S. Monroe, trustee, etc.

Trust deed. Dated August 5, 1868. Recites indebtedness to Derby of $16,000, secured by his note of even date, due and payable at the office of said Derby, in seven months, with interest at ten per cent., being for part purchase money. To secure same, conveys B. 6 and E. ½ B. 5, in Pryor & Hopkins' subdivision, (20-acre tract also included.)
Acknowledged September 9, 1868.
Filed for record September 9, 1868.
Recorded in book 470, p. 291.

William M. Derby and wife to Joseph B. Shepard, of Chicago.

Deed. Covenants against grantors' own acts. Dated September 5, 1868. Consideration, $18,000. Conveys W. ½ B. 5, in Pryor & Hopkins' subdivision, etc., subject to taxes and assessments now, or hereafter to become, due.
Acknowledged September 5, 1868.
Filed for record September 5, 1868.
Recorded in book 472, p. 387.

Joseph B. Shepard, (bachelor,) of Chicago, to William M. Derby.

W. Deed. Dated September 24, 1868. Consideration, $21,000. Conveys W. ½ B. 5, Pryor & Hopkins' subdivision, etc.
Acknowledged September 28, 1868.
Filed for record September 29, 1868.
Recorded in book 482, p. 159.

137 William M. Derby to Joseph B. Shepard.

Mortgage. Dated September 24, 1868, for $10,000. Recites indebtedness of $10,000, evidenced by two notes, signed by Henry H. Honore in favor of said Shepard, of even date, each for $5,000, payable in one and two years, with semi-annual interest, at eight per cent. To secure same, conveys W. ½ B. 5, of Pryor & Hopkins' subdivision, being to secure part of purchase money.
Acknowledged September 29, 1868.
Filed for record September 30, 1868.
Recorded in book 122, p. 450.

Samuel H. Kerfoot and J. Ford Pierson and wives to William M. Derby.

Q. C. Deed. Dated September 5, 1868. Consideration, $1,000. Remise, release, sell, convey, and quitclaim all the right, title, interest, claim, and demand which the party of the first part have in and to the following-described lots, pieces, or parcels of land, to wit: The lands referred to in a certain agreement made between the said William M. Derby and the said Kerfoot and Pierson, dated March 19, 1867, and recorded in the recorder's office of said Cook County, in book 404, page 292, said lands being particularly known as follows, etc., etc.
Acknowledged.
Filed for record September 5, 1868.
Recorded in book 472, p. 393.

(Endorsed:) Filed August 10th, 1869. W. H. Bradley, cl'k.

138 On this day, to wit, the tenth day of August, A. D. 1869, came said complainants, by their solicitors Hill & Dale, and filed in said clerk's office their præcipe in said entitled cause, which said præcipe is in the words and figures following, to wit:

Præcipe for sub.

Circuit court of the United States for the northern district of Illinois.
In chancery.

JOHN J. WALKER, JOHN J. WALKER, Executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, William L. Hopkins, Starke H. Oliver, & Kate E. Oliver,
vs.
WILLIAM M. DERBY, SAMUEL H. KERFOOT, J. Ford Pierson, Alonzo Rawson, Samuel Wing, Henry H. Honore, Brian Philpot, Henry E. Picket, Joseph B. Shepard, Henry S. Monroe.

The clerk will please issue a subpœna in the above-entitled cause against all said defendants except William M. Derby, returnable
139 the first Monday of September next.

Yours, &c.,

HILL & DALE,
Compl't's Sol'rs.

To W'M H. BRADLEY, Esq., *Clerk, &c.*

(Endorsed:) Filed Aug. 10, '69. W. H. Bradley, cl'k.

On this day, to wit, the tenth day of August, A. D. 1869, a writ of subpœna issued out of said clerk's office against said defendants in said cause, which said writ, together with the memorandum thereto attached, and the return of the marshal endorsed thereon, are in the words and figures following, to wit:

2nd sub.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to Samuel H. Kerfoot, J. Ford Pierson, Alonzo Rawson, Samuel Wing, Henry H. Honore, Brian Philpot, Henry E. Picket, Joseph B. Shepard, and Henry S. Monroe, impleaded with W'm M. Derby, greeting:

140 We command you, and every of you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of September next, to answer the bill of complaint & amended bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, William L. Hopkins, Starke H. Oliver, & Kate E. Oliver filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this

141 tenth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, and of our independence the ninety-fourth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

W'M H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that I have appointed, and by these presents do appoint A. C. Campbell, my true and lawful deputy,
142 to execute the annexed writ, (John J. Walker et als. vs. Samuel H. Kerfoot et al.) and to make true return thereon, according to law.

B. H. CAMPBELL, [SEAL.]
United States Marshal of the Northern District of Illinois.

I served the subpœna hereto attached in manner following, to wit, upon Samuel Wing and Brian Philpot, therein named, by delivering a true copy thereof to each of them personally, on the 11th day of August, A. D. 1869, and upon Samuel H. Kerfoot, J. Ford Pierson, Henry E. Picket, and Henry S. Monroe therein named, by delivering a true copy thereof to each of them personally on the 12th day of August, in the year aforesaid, and upon Henry H. Honore therein named, by leaving a true copy thereof for him at his dwelling-house with Bridget Dooling—she being a free white person of more than ten years of age, and a resident of his family—and informing her of
143 the contents thereof, on the said 12th day of August, and upon Joseph B. Shepard therein named, by leaving a true copy thereof for him at his dwelling-house on the day last above mentioned with Eliza Shepard, his sister—she being a free white person of more than ten years of age, and a member of his family—and informing her of the contents thereof. I have not been able to find Alonzo Rawson therein named in my district.

B. H. CAMPBELL,
U. S. Marshal,
By A. C. CAMPBELL,
Special Deputy.

A. C. Campbell, being first duly sworn, deposes and says that he served the annexed writ as stated in the within and foregoing return.

A. C. CAMPBELL.

Subscribed & sworn to before me this 1st day of September, A. D. 1869.

PHILIP A. HOYNE,
U. S. Com'r.

(Endorsed:) Filed Sept. 6th, A. D. 1869. W'm H. Bradley, clerk.

144 On this day, to wit, the 30th day of August, A. D. 1869, came defendant Samuel Wing by his solicitor, Geo. Herbert, and filed in said clerk's office his appearance in said cause, which said appearance is in the words and figures following, to wit:

Appearance of def't Wing.

In the United States circuit court for the northern district of Illinois.
In chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

JOHN J. WALKER ET AL.
vs.
WILLIAM M. DERBY & ALS.

And now the said Samuel Wing, one of the defendants to the said amended bill of complaint, enters his appearance in the said cause.
By his solicitor:

GEO. HERBERT.

(Endorsed:) Filed Aug. 30, 1869. W'm H. Bradley, c'lk.

On this day, to wit, the 12th day of October, A. D. 1869, came defendant Samuel Wing, by his solicitor, Geo. Herbert, and filed
145 in said clerk's office his answer in said cause, which said answer is in the words and figures following, to wit:

Answer of def't Wing.

In the circuit court of the United States, northern district of Illinois.
In chancery.

JOHN J. WALKER & ALS.
vs.
WILLIAM M. DERBY & ALS.

The several answer of Samuel Wing to the bill of complaint of John J. Walker and others.

This defendant, now and at all times saving and reserving to himself all and all manner of exception to the many multiform errors, uncertainties, and imperfections and omissions in the said defendant's said bill of complaint, as the same is amended, answering, say that heretofore, on or about the first day of August, and for a long time before that date, the said defendant William M. Derby, claimed to be, under title duly
146 derived by mesne conveyances, from the United States of America, the owner in fee simple, absolute, by a good and indefeasible title, duly entered of record under deeds of conveyance duly executed, acknowledged, and recorded in the office of the recorder of Cook County, in the State of Illinois, and under such conveyances was the owner of the following-described lot, piece, or parcel of land, part and parcel of the lands first in said complainant's said amended bill of complaint described; that is to say: Block four in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section three, (3,) town thirty-eight, (38,) north range fourteen, in the said county of Cook, and State of Illi-

nois; and among other conveyances the said William M. Derby claimed title by, through, and under, and dated July 3, 1856, and duly acknowledged and recorded July 14, 1856, in the office of the said recorder of said county, book 116, page 413, made between Arthur F. Hopkins, and Juliet A. Hopkins, his wife, of the one part, and James W. Pryor
147 and Katherine M. Pryor, his wife, of the other part, in and by which it was, among other things, set forth in substance, that said Arthur F. Hopkins and James W. Pryor owned, in unequal parts, as tenants in common, the north seventy acres of land in the west half of the northwest quarter of section three, (3,) town thirty-eight, (38,) north range fourteen, (14,) east of the third principal meridian, in Cook County, Illinois, and that they have agreed to make partition of said seventy acres as hereinafter described. And whereas the said seventy acres, and the other ten acres of said west half have been surveyed and subdivided into twelve blocks and two hundred and eighty-eight lots, according to a map of said survey and subdivision, (to wit, Hopkins and Pryor's subdivision aforesaid,) and in consideration thereof, and for the purpose of making partition of said seventy acres between the said Arthur F. Hopkins and James W. Pryor, release, conveyed, and confirmed, among other property, the whole of the said block four,
148 (4,) bounded by State street, First street, Wabash avenue, and Second street, to the said Arthur F. Hopkins, to have and to hold the said block four, (4,) and the other land therein released, renewed, and confirmed to the said Arthur F. Hopkins, his heirs and assigns, fovever.

And this defendant, further answering, says that the fee simple of the said block four, last mentioned, being the land claimed by this defendant, was by the deed last mentioned vested in the said Arthur F. Hopkins in his lifetime, as by the said record thereof appeared, and hath ever since appeared to have and to hold to himself, the said Arthur F. Hopkins, his heirs and assigns, forever, and that for aught that of record appears or ever appeared until the first day of August, A. D. 1868, and thereafter, until the filing of the bill of the complainants *bill*, the said Arthur F. Hopkins, and his legal and personal representatives, and their grantees, were the owners, and claimed the said block four, (4,)
149 in fee simple, absolute, as by said deed and the record thereof appears, to which, or a copy of which, for greater certainty, this defendant refers.

And this defendant, further answering, says that, afterwards and prior to the second day of February, A. D. 1866, the said Arthur F. Hopkins departed this life, leaving a will and testament, which, with the codicil thereto, was duly proved and approved by the judge of the court of probate within and for the county of Mobile, in the State of Alabama, wherein the said Arthur F. Hopkins, at the time of his said decease resided, and recorded in said court, a copy of which will and testament, and said codicil, and of probate and proof thereof, duly under the statute, has been duly filed for record in the office of the clerk of the county court for said Cook County, and recorded in the office of the recorder of said Cook County, March 11, 1867, being the same last will and testament referred to in the said complainant's amended bill
150 of complaint, to a copy of which, as recorded as aforesaid, this defendant, for greater certainty, here craves leave to refer, by which said last will and testament the title in fee simple absolute was vested in the executors of the said last will and testament of the said Arthur F. Hopkins, and the said John J. Walker, one of the complainants, and one William G. Jones, were nominated and appointed execu-

tors of the said will; and such further proceedings were had thereon, that on or about the sixth day of February, A. D. 1867, the whole title, legal and equitable, in the said block four, (4,) was vested in, and so far as anything by the records in the office of the recorder of Cook County appeared to be vested in the said John J. Walker, as sole executor of the said Arthur F. Hopkins, under the said will and codicil, and the probate thereof, a copy of which was duly filed in the office of said recorder for record, according to the statute, on the eleventh day of March, A. D. 1867, and was afterwards recorded—book 377, page
151 370—to which, or a copy of which, this defendant, for greater certainty, craves leave to refer; and the same so appeared thence thereafter, until the 16th day of March, A. D. 1867, when the said John J. Walker conveyed the same to the said William M. Derby, by his deed, bearing date on the day and year last aforesaid, and duly acknowledged and recorded on the 19th day of March, A. D. 1867, in book 379, page 466, in the office of the said recorder, in consideration of the sum of twenty-five thousand six hundred dollars therein stated, to be paid with covenants of warranty, as therein fully and at large set forth, to which said deed, or a copy thereof, this defendant, for greater certainty, craves leave to refer, it being the same deed referred to in said bill of complaint in that behalf. And this defendant, on information and belief, states that the said sum of twenty-five thousand six hundred dollars was, in fact, long since, and long prior to the first day of August, 1868,
152 paid, to wit, on or about the thirty-first day of May, A. D. 1867; all of which specially appeared of record on that day, by virtue of a certain deed of that date, made by Henry S. Monroe, as trustee, to said William Derby, duly made, executed, acknowledged, and recorded in the office of said recorder, book 379, page 468, which deed is signed and acknowledged, also, by the said John J. Walker, in which it is expressly stated, that the said sum, or the balance thereof, has been fully paid and cancelled, to which, or a copy of which, this respondent craves leave to refer for greater certainty.

And this respondent, further answering, says that, by a certain other deed duly executed and acknowledged by the said John J. Walker, Maria Walker, William Barnewell, and Mary M. Barnewell, Henry A. Lowe, and Cornelia C. Lowe, Augusta H. Rice, Starke H. Oliver, Kate C. Oliver, and William L. Hopkins, and Juliet A Hopkins, complainants in said bill of complaint, and recorded in the office of said re-
153 corder of Cook County, and dated on or about the sixteenth day of March, A. D. 1867, the said complainants conveyed all their right, title, and interest in the said block four, and other property, to the said William M. Derby, and therein and thereby expressed, by words in the said deed, that the sole purpose and object of the same was to sanction and confirm the sale of the premises therein described, made on the said sixteenth day of March, 1867, to the said William M. Derby, by said John J. Walker, as executor of the last will and testament of the said Arthur F. Hopkins, and to sanction and make valid the deed of said Walker to the said William M. Derby, hereinbefore mentioned, and made by said Walker, as such executor, to said Derby.

And this respondent, further answering, says that he is, and was, prior to the said first day of August, A. D. 1868, advised, and therefore submits to the court that, by the record it appeared, upon the date last aforesaid, that the title, which was either in law or equity in the
154 said complainants, and each and every was, by the said deeds of conveyance, duly executed, acknowledged, and recorded, prior

to said day and year last mentioned, and all the right, claim, interest, and equities in them, or either of them, were wholly and entirely by the same, and vested of record in the said William M. Derby, and each and every of them, who, for valuable consideration actually paid, held the same as bona fide purchasers, without notice of any of the rights or equities, real or supposed, patent or latent, of the said complainants, in and to the premises aforesaid.

And this defendant, further answering, says that, after the execution, acknowledgment of the said several deeds, and conveyances above referred to, and the same had been recorded, and without any notice, express or implied, or any suspicion of any of the facts or circumstances of fraud or collusion, or bad faith, in said bill stated or charged as against the said William M. Derby and the said J. F. Pierson,
155 and the said Samuel H. Kerfoot, or either of them, or of any circumstances tending or leading to the same, and without any knowledge of any agency of the said Kerfoot or said Pierson, or of any fiduciary relation subsisting by him or them, or either of them, for or on behalf of the said John J. Walker, or the said complainants, or any or either of them, as in said bill of complaint stated, and without any notice or knowledge of the filing of said bill of complaint on behalf of the said Samuel H. Kerfoot and J. Ford Pierson against the said defendant William M. Derby, in said superior court of Chicago, in good faith, and for the consideration of twenty-eight thousand dollars, ($28,000,) long since and long before the filing of said bill of complaint of the said complainants herein, and prior to the eighth day of August, A. D. 1868, fully paid to him, the said William M. Derby, purchased of the said defendant, the said William M. Derby, the said block four (4) in Pryor and Hopkins' subdivision of the west half of
156 the northwest quarter of section three (3) in town thirty-eight (38) north range fourteen, (14,) east of the third principal meridian aforesaid, and took a deed thereof from the said William M. Derby and wife, conveying the same to this respondent in fee simple absolute, with full covenants of warranty, believing at the time that the said William M. Derby, at the time aforesaid, had good right and lawful authority to sell and convey the same to the respondent, and had a good and indefeasible title to the same in fee simple, in the law as in his said deed covenanted and agreed and as by the said conveyances and records thereof, hereinbefore referred to, fully and at large appear, without any right, title, interest, or claim of the said complainants, or any or either of them, or of any party whatsoever, legally or equitably to be made thereto or to any part thereof; and that relying upon the said deeds and conveyances above referred, and the title therein conveyed, and the record thereof, this defendant hath long since
157 conveyed to divers other persons who now hold the same by, through, and under him as bona fide purchasers, without notice by deeds of warranty by him executed, acknowledged, and recorded.

And this defendant is informed and believes the fact to be that, however the fact may be as to any supposed agency of the said Samuel H. Kerfoot and J. Ford Pierson, or any or either of them, for the said John J. Walker, or the complainants, or any or either of them, or any fiduciary relation subsisting between them in that behalf, or as to any representations by them, or either of them made, as in said bill of complaint stated or charged, that the said John J. Walker dealt with the said William M. Derby, on his, the said John J. Walker's own knowledge and information, and on his own examination of the land, and the

advice and estimate of value put upon the same by other persons than the said William M. Derby, Samuel H. Kerfoot, and J. Ford Pier-
158 son, and not upon the advice or information and estimate of value of the said Kerfoot, Derby and Pierson, or either of them, and that the same was sold by him, the said John J. Walker, to the said William M. Derby substantially for cash, and that at the time of the sale the amount paid for the land in that bill described, was a full and fair cash value, and all it was worth in cash in the market.

And as to the twenty-third interrogatory appended to said bill of complaint, this defendant says that the said purchase money to be by him paid was twenty-eight thousand dollars ($28,000) as above stated, and that fourteen thousand dollars ($14,000) was paid in money to the said William M. Derby on or before the third day of August, A. D. 1868; and that the balance was secured by two notes amounting to the sum of fourteen thousand ($14,000) dollars, and a trust deed to secure the same made by the said Samuel Wing to one Henry S. Monroe, dated August 1st, 1868, and filed for record on the third day of August,
159 A. D. 1868, and that the said notes were actually fully paid to the said William M. Derby, in money on or before the eighth day of August, A. D. 1868, on which day by the deed of the said Henry S. Monroe, and the said William M. Derby, the said trust deed was released and discharged as by record of said release in the office of the said recorder will fully appear, to which or a copy of which, this defendant for greater certainty, craves leave to refer.

And this defendant, as to all the other matters and things in the said complainant's said bill of complaint, stated or charged, or inquired of in the special interrogatory attached thereto, is a total stranger, and therefore connot answer on information and belief, or otherwise, except as above, and if material, calls for proof thereof as the said complainants may be advised in that behalf.

And this defendant, having thus fully answered, craves of the court the full benefit of the facts in this his answer, fully and at
160 large set forth, as if he had set the same out by way of formal plea herein, claiming that he was a bona fide purchaser of the said block four (4) for a valuable consideration, actually paid without notice, as is herein above at large set forth.

And this respondent here denies all and all manner of combination and confederacy, wherewith he is charged, without this, that there is any other matter or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

161 SAMUEL WING.

GEO. HERBERT, *Def'ts Sol'r.*
GEO. HERBERT, *Of Counsel.*

(Endorsed:) Filed Oct. 12, 1869. W'm H. Bradley, cl'k.

On this day, to wit, the 4th day of November, A. D. 1869, came defendant Alonzo Rawson, by his solicitors, Monroe & McKinnon, and

filed in said clerk's office his answer in said cause, which said answer is in the words and figures following, to wit:

Answer of def't Rawson.

In the circuit court of the United States for the northern district of Illinois. In chancery.

The answer of Alonzo Rawson, defendant, to the amended bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnwell, Mary M. Barnwell, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, complainants:

162 This defendant now, and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said amended bill of complaint contained, for answer thereunto, or unto so much and such part or parts thereof, as this defendant is advised is or are material or necessary for him to make answer unto, he, this defendant, answering, saith:

That he has no knowledge or information in respect to the transactions, dealings, letters, paper writings, or proceedings, between the said complainants, or any of them, and said defendants Samuel H. Kerfoot, J. Ford Pierson, and William M. Derby, or any or either of them, in said complainant's said amended bill of complaint in that behalf stated, save as advised by the said complainants in their said amended bill of complaint, and therefore this defendant is unable to answer in that regard.

163 And this defendant, further answering, saith: On or about the fifth day of September, in year of our Lord one thousand eight hundred and sixty-eight, this defendant, in good faith, without any knowledge, notice, or information, of any equities of the complainants, or either of them, purchased of the defendant William M. Derby, the whole of block six, the east half of block five, and the tract in section four in said bill of complaint described, at the price of eighty-six thousand dollars, and then and there paid the said defendant thereon the sum of twenty thousand dollars, and secured the payment of the balance of the said purchase price by deeds of trust on said premises, and that since the said time this defendant has paid the said defendant William M. Derby, the further sum of about twenty-nine thousand dollars on said purchase.

And further, this defendant answering, saith that he does not know, and therefore cannot state, who now holds the securities for the
164 balance of the said purchase price, but this defendant believes the same are now held and owned by said defendant William M. Derby.

And this defendant denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, without this, that there is any other matter or thing in the said complainants' said amended bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of the said defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct. And having now fully

answered, prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

ALONZO RAWSON.

JOHN J. MCKINNON,
Solicitor.
CORYDON BECKWITH, and
MONROE & MCKINNON,
Of Counsel for Defendant.

STATE OF ILLINOIS,
City of Chicago, Cook County, ss:

Alonzo Rawson, having been duly sworn, says that he is the defendant whose name is subscribed to the foregoing answer; that he has heard the said answer read and knows the contents thereof; that the said answer is true of his own knowledge, except as to the matters and things therein stated and set forth on information and belief, and as to the matters and things he believes it to be true; and further saith not.

A. RAWSON.

Subscribed & sworn to before me this first day of November, A. D. 1869.

[NOTARIAL SEAL.] RUFUS H. RICE,
Notary Public in and for the City of Chicago.

(Endorsed:) Filed Nov. 4, 1869. W'm H. Bradley, cl'k.

166 On this day, to wit, the 4th day of November, A. D. 1869, came Brian Philpot & Henry E. Picket, defendants, by their solicitors, and filed in said clerk's office, their joint & several answers in said cause, which said answers are in the words and figures following, to wit:

Answer of def'ts Philpot & Picket.

In the circuit court of the United States for the northern district of Illinois. In chancery.

The joint and several answers of Brian Philpot and Henry E. Picket, two of the defendants to the amended bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnwell, Mary M. Barnwell, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette H. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, complainants.

These defendants now, and at all times hereafter, saving and reserving to themselves all benefit and advantage of exception which can
167 or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said amended bill of complaint contained, for answer thereunto, or unto so much and such part or parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, they, these defendants answering, say:

They have no knowledge or information in respect to the transactions, dealings, letters, paper writings, or proceedings between the said complainants or any of them and said defendants Samuel H. Kerfoot, J. Ford Pierson, and William M. Derby, or any or either of them in said complain-

ant's said amended bill of complaint in that behalf stated, save as advised by the said complainants in their said amended bill of complaint, and therefore these defendants *is* unable to answer in that regard.

And these defendants, further answering, saith: On or about the twelfth day of September, in the year of our Lord one thousand
168 eight hundred and sixty-eight, these defendants in good faith, without any knowledge, notice, or information of any equities of the complainants, or either of them, purchased of the defendant William M. Derby, the whole of block one, mentioned in said complainant's bill of complaint, for the sum of seventy-thousand dollars, to be paid in five years, with interest, at eight per cent. per annum, in which purchase, one Winchester Hall was and is interested with these defendants, and on which said premises these defendants and said Winchester Hall have made valuable and permanent improvements.

And further, these defendant say, that they do not know, and therefore cannot state, who now holds the securities for the balance of the said purchase price, but these defendants believe the same are now held and owned by said defendant William M. Derby.

And this defendant denies all and all manner of unlawful com-
169 bination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter or thing in the said complainants' said amended bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of these said defendants. All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and having now fully answered, pray*s* to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HENRY E. PICKET.
B. PHILPOT.

JOHN J. MCKINNON, *Solicitor.*
CORYDON BECKWITH,
MONROE & MCKINNON,
Of Counsel for Defendant.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

170 Brian Philpot and Henry E. Picket, having been duly sworn, say they are defendants whose names are subscribed to the foregoing answer; that they have heard the said answer read and know the contents thereof; that the said answer is true of their own knowledge, except as to the matters and things therein stated and set forth on information and belief, and as to the matters and things they believe it to be true. And further saith not.

HENRY E. PICKET.
B. PHILPOT.

Subscribed & sworn to before me this first day of November, 1869.
O. K. A. HUTCHINSON,
U. S. Commissioner.

(Endorsed:) Filed Nov. 4, 1869. W'm H. Bradley, cl'k.

On this day, to wit, the 4th day of November, A. D. 1869, came de-

fendant Henry S. Monroe, by his solicitors, Monroe & McKinnon, and filed in said clerk's office his answer in said cause, which said answer is in the words and figures following, to wit:

Ans. of def't Munroe.

171 In the circuit court of the United States for the northern district of Illinois. In chancery.

The separate answer of Henry S. Monroe, one of the defendants, to the amended bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnwell, Mary M. Barnwell, Henry H. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette H. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, complainants.

This defendant, now and at all times hereafter, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said amended bill of complaint contained for answer thereunto, or unto so much and such part or parts thereof as this defendant is advised is or are material or necessary for him
172 to make answer unto, this defendant, answering, says that of his own knowledge he does not know whether or not he was made trustee to secure the purchase money, or any portions thereof, to become due upon the sales of land made by said Derby to said Rawson and Wing, or either of them, as stated in said bill; but he says that he was informed by said Derby that such was the case, and believes that the facts in relation thereto are substantially as stated in said amended bill.

Further answering, this defendant says that not one of said trust deeds, or the notes they were given to secure, are now, or ever were, in the possession or under the control of this defendant, this defendant being made trustee as aforesaid without his knowledge. And he further says that he does not now hold, and never has in any way or manner held any notes or securities in any way relating to the property mentioned in said amended bill of complaint, for the use or ben-
173 efit of any of the defendants thereto.

Further answering, this defendant says that he has no interest whatever, except as naked trustee as aforesaid, in the land described in said bill, and does not know what interest the other said defendants have in said property except as he has been informed; but this defendant is informed and believes that such interest is correctly stated and set forth in the answer of said defendant Derby, filed in this cause.

Further answering, this defendant says that he is not of his own knowledge able to answer the matters and things asked in the twenty-third interrogatory annexed to said bill, except upon information derived from defendant Derby, which is stated and set forth in his answer filed in said case.

Further answering, this defendant denies all combination and confederacy in said bill charged; and, having answered as required by the note at the foot of the said amended bill of complaint,
174 prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

H. S. MONROE.

JOHN J. MCKINNON,
Solicitor for Defendant Monroe.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

HENRY S. MONROE, having been duly sworn, says he is a defendant, whose name is subscribed to the foregoing answer; that he has heard the said answer read, and knows the contents thereof; that the said answer is true of his own knowledge, except as to the matters and things therein stated and set forth on information and belief, and as to those matters and things he believes it to be true. And further saith not.

H. S. MONROE.

Subscribed and sworn to before me this 27th day of October, 1869.
[NOTARIAL SEAL.] M. J. DRUNN,
175 *Notary Public in & for the City of Chicago, Cook Co., Illinois.*

(Endorsed:) Filed Nov. 4, 1869. W'm H. Bradley, clerk.

On this day, to wit, the 4th day of November, 1869, came said defendants Kerfoot and Pierson, by their solicitors, and filed in said clerk's office their answer in said entitled cause; which said answer is in the words and figures following, to wit:

Ans. of def'ts Kerfoot & Pierson.

In the circuit court of the United States for the northern district of Illinois. In chancery.

The joint and several answers of Sam'l H. Kerfoot and J. Ford Pierson, two of the defendants to the amended bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnwell, Mary M. Barnwell, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, complainants.

These defendants now, and at all times hereafter, saving and reserving to themselves all benefit and advantage of exception which
176 can or may be had or taken to the many errors and uncertainties, and other imperfections in the said complainants' said amended bill of complaint contained, for answer thereunto, or unto so much and such part or parts thereof as the defendants are advised is or are material or necessary for them to make answer unto, they, these defendants answering, say:

That they admit that heretofore, and on or about the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, the complainants John J. Walker, John J. Walker, executor of the last will and testament of Arthur F. Hopkins, deceased, and Maria Walker aforesaid, were owners in fee simple; and that the complainants Cornelia C. Lowe, wife of Henry A. Lowe aforesaid, and Mary M. Barnwell, wife of William Barnwell aforesaid, and Kate E. Oliver, wife of Stark H. Oliver aforesaid, and Augusta H. Rice, Juliette A. Hopkins, and William L. Hopkins aforesaid, as legatees under and by virtue of the said last will and testament, were interested in the following-described land and real estate situate in the city of Chicago, in the county of Cook, and State of Illinois; that is to say, an equal undivided half of the following-described tract of land known as that part of the
177 northeast quarter of section four, (4,) township thirty-eight, (38,) north of range fourteen, (14,) east of third principal meridian,

bounded and described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad seventy-four (74) rods to the north line of said quarter section; thence east on said line to the place of beginning. Also the whole of the following-described pieces or parcels of land, to wit: The east half of block numbered one, (1,) and the east half of block numbered six, (6,) the whole of blocks numbered five (5) and four, (4,) and lots numbered one, (1,) two, (2,) twenty-three, (23,) and twenty-four, (24,) in block numbered twelve, (12,) all in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section numbered three, (3,) in township and range aforesaid; which lands were subject to certain rights and privileges then enjoyed by the Union Stock Yards and Transit Company, and that other legal title to all said real estate was in said Arthur F. Hopkins at the time of his decease, and

178 that by virtue of a certain declaration of trust executed by the said Hopkins in his lifetime, in the words and figures in said amended bill set forth, the complainant John J. Walker, was the owner of the undivided one-fourth; complainant Maria Walker, was the owner of another undivided one-fourth, and complainant John J. Walker, executor, and the other complainants named were jointly the owners of the other undivided two-fourths of said real estate.

And these defendants, further answering, admit that, on or about said first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, at Chicago aforesaid, said complainants, by and through the complainant John J. Walker, as agent and as executor, acting on their behalf and for himself, employed these defendants, who then and there were doing business as real estate agents and loan brokers, under the firm name and style of S. H. Kerfoot & Co., to sell said real estate for complainants, and to that end, by employing said defendants, impliedly agreed to pay these defendants for their services and commissions in that behalf five per centum of and on the first three thousand dollars, and two and one-half per centum on the balance of the purchase money to be had for said real estate on sale thereof, through these

179 defendants; and these defendants then and there, in consideration thereof, undertook and agreed with said complainants to serve said complainants faithfully, and to the best of their ability in making sale of said real estate. And these defendants say and state the fact to be that in making sale of said real estate as hereinafter mentioned and set forth, these defendants did honestly, faithfully, and to the best of their skill and ability, serve the said complainants.

And these defendants, further answering, deny that, in breach of the trust, or of any trust in them reposed by said complainants, or any one or either of them, these defendants, or either of them, contrary to their duty and to equity, or good conscience in that behalf, secretly or covertly combined or confederated in any manner or way, or in any manner or way united, combined, or confederated with the said William M. Derby; or that, on or about the first day of March, one thousand eight hundred and sixty-seven, at the city of Chicago, or at any other time or place whatever, took any undue advantage, or any advantage whatever, of the relations of trust or confidence, or of any relation whatever, that then or ever existed between these defendants, or either of them, and the said complainants, or any or either of them, in the premises; and, further, these defendants deny that they, or either of them, agreed to

180 become, or that they, or either of them, ever did, in any manner or way, become or agree to become, with the said William M.

Derby, or any other person or persons whatever, purchasers or joint owners, or purchaser or owner, of said real estate, or any part thereof, at a price far below its then cash value, or at any price whatever. And these defendants, each for himself, further deny that to that end, or any other end or purpose whatever, these defendants, or either of them, on the said day and year, or at any other time, united, confederated, or combined with the said William M. Derby, or with any one else, for the purpose of effecting or concealing the sale by these defendants of the said premises from said complainants, or any or either of them; or that these defendants, or either of them, in any manner or way, arranged or agreed with said William M. Derby to hold out to said complainants, or any or either of them, that the said William M. Derby was the sole purchaser of said premises at the sum of twenty-five thousand six hundred dollars, or at any other price; but these defendants, and each of them, say that, in truth and in fact, the said William M. Derby was the sole and only purchaser of the said real estate, at the said price, from said complainants. And these defendants, jointly and severally, further deny that, pursuant to any false or fraudulent arrangement,
181 agreement, combination, or confederacy between these defendants, or either of them, and the said William M. Derby, these defendants, or either of them, held out, or could have held out, to the said complainants, or any of them, that said William M. Derby was the sole purchaser of said premises, at the price aforesaid, with a view to deceive or defraud the said complainants, as stated and charged by said complainants in their said amended bill of complaint, because these defendants say that, in truth and in fact, the said William M. Derby was the sole purchaser thereof, without any combination or confederacy with these defendants, or either of them, or any one else, to the knowledge of these defendants. And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson upon his information and belief, deny that, in any way, or by any such means, or in any other wrongful or improper way, or by any wrongful or improper means, the said defendant William M. Derby, procured on or about the nineteenth day of March, one thousand eight hundred and sixty-seven, or at any other time, from said John J. Walker, executor as aforesaid, a deed of all said real estate, purporting to convey the said real estate to the said William M. Derby, to bear date the sixteenth day of March, one thousand eight hundred and sixty-seven, to
182 be acknowledged before defendant Samuel H. Kerfoot, who was then a justice of the peace, and afterwards caused the same to be recorded in the recorder's office of said county, as in said amended bill in that behalf alleged. But these defendants, the said Samuel H. Kerfoot of his own knowledge and said J. Ford Pierson on his information and belief, say, and state the facts to be, that on or about the third day of March, in the year of our Lord one thousand eight hundred and sixty-seven, the complainant, John J. Walker, asked these defendants if they knew any one who would be likely to buy said premises for cash; to which inquiry defendant Kerfoot stated to said Walker that the defendant Derby, was the only person he knew of who had the money, as said Derby had lately sold a valuable dwelling to one Chopotin for the sum of forty-five thousand dollars (45,000) cash, as he, said Kerfoot, then understood, and would be likely to be able, if he was willing, to make such a purchase for cash. Whereupon said complainant requested these defendants to see said defendant Derby, and inform him that said property was for sale at $1,000 per acre. In compliance with which request, defendant Samuel H. Kerfoot called upon said defend-

ant, and informed and advised the said defendant William M. Derby, that these defendants had the land in said amended bill and
183 hereinbefore described, for sale at their office in Chicago aforesaid, at the price or sum of one thousand dollars per acre cash, and then and there asked the said William M. Derby if he would purchase the same at that price, which the said William M. Derby then and there refused to do; but then stated to defendant Samuel H. Kerfoot, that he, said Derby, was willing to purchase said real estate, and pay therefor such price as, in his judgment, it was worth. Whereupon defendant Samuel H. Kerfoot requested said Derby to make a cash offer for the same, which to do said Derby refused, and then and there stated to said defendant Kerfoot that he would not pay cash for said lands, or any other lands, unless he could purchase at a good bargain. Defendant Kerfoot thereupon stated to said Derby that said complainant, John J. Walker, part owner and agent for the other owners of said real estate, was then in the city of Chicago, and requested said Derby to go with him, and talk with him, said John J. Walker, personally, in regard thereto; and said Derby and defendant Kerfoot did go and see the said John J. Walker, at the office of said S. H. Kerfoot & Co., at which time and place the said John J. Walker stated to said Derby, in the presence of defendant Kerfoot, that he, said John J. Walker, as owner and
184 agent of the other owners of said premises, had come to the city of Chicago for the express purpose of selling said premises, and then and there requested said Derby to make a cash offer therefor, but said Derby declined so to do until such time as he could go upon the land, look it over, and advise himself as to its value. And these defendants, upon information and belief, further say that said Derby did go upon and look over the said lands, and subsequently, on or about the sixth day of March, one thousand eight hundred and sixty-seven, said defendant Derby again met the said John J. Walker at the office of the defendants, defendant Kerfoot being then and there present; when and where said Derby stated to said John J. Walker that he had been out and examined the lands, and advised himself in regard to the value of the same, and was willing and offered to become the purchaser thereof from the said John J. Walker, and of and from the other owners and parties interested therein, at the price or sum of twenty-five thousand six hundred dollars, to be paid one-quarter cash and the balance in three equal annual instalments, to become due in one, two, and three years, respectively, with interest at six per cent., which offer the said John J. Walker then and there refused to accept; but, after much banter-
185 ing and bartering and trading, proposed and offered to sell the said lands to said Derby at and for the said price and sum of twenty-five thousand six hundred dollars, to be paid, eight thousand two hundred dollars cash in hand, and the balance in three equal annual instalments, to become due in one, two, and three years, with interest at six per cent. per annum; which said offer of said John J. Walker the said Derby, after considerable discussion, then and there accepted; and thereupon, at the instance and request of the said John J. Walker, and as evidence of the said bargain and sale, an agreement in writing was made and entered into between the said John J. Walker and the said defendant William M. Derby, wherein and whereby it was, among other things, acknowledged and agreed that, for value received, John J. Walker, of Mobile, Alabama, as executor of the estate of Arthur F. Hopkins, deceased, thereby agreed to sell to the said William M. Derby, who, for value received, agreed to buy of said Walker, executor aforesaid, the property of said estate lying in sections three and

four, in township thirty-eight north, of range fourteen east of third principal meridian, being the east half of blocks one and six, and the whole of blocks four and five, and lots one, two, twenty-three, and twenty-four of block twelve, all in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section three of said township and
186 range, and also an undivided one-half of twenty acres owned jointly by said estate and one Akerly, lying in the northeast corner of said section four, township and range aforesaid, the price of said property being twenty-five thousand six hundred dollars, payable eight thousand two hundred dollars on delivery of a good and sufficient deed, conveying said premises to said Derby, free and clear of all incumbrances, and the balance in three equal annual payments, with interest at six per cent. per annum from date thereof; the notes for said deferred payments to be secured by mortgage from said Derby, with power of sale therein contained, duly executed, and conveying the same premises thereby sold as by the said agreement, under the hands and seals of the said John J. Walker and the said Derby, when produced, reference being thereto had will more fully appear; which said agreement, after the making and execution thereof as aforesaid, was, by the agreement of the said Walker and the said Derby, delivered to defendant Samuel H. Kerfoot, to be by him held in escrow until the deed therein mentioned should be made and delivered to said Derby, and the title to said real estate should be examined.

And these defendants, further jointly and severally answering,
187 admit that soon after the making and delivery of said agreement in escrow, as aforesaid, said John J. Walker furnished to the defendant Derby an abstract of title to said real estate, who submitted the same to his attorney, Henry S. Monroe, esq'r., to examine. Upon examination whereof the said Monroe reported the title to said real estate in section three to be good in said John J. Walker and other said owners thereof, with the exception of a defect in the probate of the will of said Arthur F. Hopkins, deceased, but the said Monroe made some further and more serious objections to the title to the undivided interest west of State street, and (which at the time this defendant Kerfoot warned said Walker, was a pretext of said Derby by which he might avoid taking the undesirable portion of the land lying west of State st.,) whereupon said Derby informed said John J. Walker of the said objection, who thereupon to remove the same, and the better to perfect the title to said premises, proposed to said Derby that if he would then make said purchase, and pay him the said sum of eight thousand two hundred dollars cash, and make and execute for the deferred payments six notes payable to said John J. Walker, executor, and, to secure the same, also make deed of trust on said real es-
188 tate, the said deed of trust to be delivered and recorded, and said notes to be delivered to said Walker, and by him deposited with these defendants in escrow until he, said Walker, should procure and deliver to said Derby a farther and confirmatory quitclaim deed of said premises from all the other owners thereof; that he, said Walker, would then and there make and deliver to said Derby a good and sufficient deed for said premises, so far as it was possible for him so to do, and would also procure and deliver to said Derby, as soon as possible thereafter, the said farther confirmatory quitclaim deed of said premises from all the other parties interested therein, and that when he so procured and delivered the said quitclaim deed, he should be entitled to receive from said Kerfoot & Co. the said notes, to which proposition the said Derby then and there assented.

And these defendants further say the said Kerfoot, of his own knowledge, and the said Pierson on information and belief, that in accordance with said last-mentioned proposition, the said Derby paid to the said John J. Walker the said sum of eight thousand two hundred dollars, and then and there made and delivered to the said Walker, who placed the same in the hands of these defendants, to hold as aforesaid, his six several promissory notes, amounting in the aggregate to the sum
189 of seventeen thousand four hundred (17,400) dollars; three of said notes bearing date the sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, each for the sum of eighteen hundred and twelve dollars and fifty cents, due respectively, on or about the sixteenth day of March, 1868, 1869, and 1870, with interest at six per cent. per annum, and payable at the office of S. H. Kerfoot & Co., which three notes were secured by deed of trust, bearing date the sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, conveying to Henry S. Monroe, esq'r, the land hereinbefore described, situate in section four aforesaid, and the other three of said promissory notes bearing date the sixteenth day of March, one thousand eight hundred and sixty-seven, each for the sum of three thousand nine hundred and eighty-seven dollars and fifty cents, payable respectively on or before the sixteenth day of March, A. D. 1868, 1869, and 1870, with interest at the rate of six per cent. per annum, payable at the office of said S. H. Kerfoot & Co., and secured by deed of trust bearing date the sixteenth day of March, one thousand eight hundred and sixty-seven, conveying to said Henry S. Monroe, esq'r, the rest of said hereinbefore described land, as by the said notes and the said deeds of trust, reference being thereunto
190 had when produced, and the production whereof these defendants crave, will more fully and at large appear. In consideration whereof the said Walker, on the nineteenth day of March, one thousand eight hundred and sixty-seven, delivered to said Derby the deed of said premises.

And these defendants, jointly and severally further say and state the fact to be, that the said Derby made the said purchase in good faith, solely and alone, of and from the said John J. Walker, as hereinbefore set forth, and that the price paid by said Derby for said premises was a fair and reasonable price for the same at the time of the purchase thereof by the said Derby aforesaid; and that neither before, or at the time of the making of said agreement, or at the time of the making and delivering of the said notes and deeds of trust, or the said deed from the said John J. Walker to said Derby, or at any other time before, were these defendants, or either of them, nor are they, or either of them now, in any manner or way whatever interested with the said Derby, or any other person or persons whatever, in the said premises, or any part thereof; or the proceeds thereof, or any part thereof; or in the making of the said purchase, or in regard thereto; and that the said Derby neither counselled or advised with these defendants, or either of them, in any manner or way in regard thereto.

191 And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief admit that said John J. Walker, executor aforesaid, executed and delivered said deed to said Derby, and received from him the sum of eight thousand two hundred dollars cash, and that said defendant Derby thereupon executed his three promissory notes in writing, payable to the order of said John J. Walker, executor aforesaid, each for eighteen hundred and twelve dollars and fifty cents, due re-

spectively on or before the sixteenth day of March, A. D. 1868, 1869, and 1870, with interest at six per cent. per annum, at the office of these defendants, and to secure the same further by deed of trust, bearing date said sixteenth day of March, A. D. 1867, conveyed the tract of land hereinbefore and in said complainants said amended bill of complaint described, situate in section four, to Henry S. Monroe, esquire, which trust-deed was (at the time of delivery by said Walker to said Derby of his deed of said premises,) delivered to said Walker, and by him, on the 19th day of March, 1867, recorded in book 379 of deeds, page 468, in the recorder's office of Cook County; and said Derby also executed and delivered his said three certain other promissory notes, payable as aforesaid, each for three thousand nine hundred and eighty-seven
192 dollars and fifty cents, due respectively on or before the sixteenth days of March, A. D. 1868, 1869, and 1870, at the office of these defendants, with interest at six per cent. per annum; and to secure the same, conveyed the rest of said land, by deed of trust bearing date the sixteenth day of March, A. D. 1867, to said Henry S. Monroe, which trust-deed, in like manner as the other trust deed, was delivered to said Walker, and by him on said 19th day of March, 1867, recorded in the office of the recorder of deeds of said county of Cook, in book 380, page 372; and said Derby also then and there delivered the said notes and deeds of trust to said Walker, who recorded said deeds of trust, and placed said notes in escrow with these defendants, to hold as aforesaid; but these defendants, and each of them, in manner aforesaid, deny that the said deed from Walker to Derby, or the said notes or deeds of trust, or any or either of them, were made or delivered, as by the said complainants, in their said amended bill of complaint, in that respect stated and charged. On the contrary thereof, these defendants, the defendant Samuel H. Kerfoot of his own knowledge, and defendant J. Ford Pierson on his information and belief, say and state the fact to be, that each, all, and every of the said deeds and notes were made, executed, and
193 delivered, as hereinbefore in that behalf set forth, and not otherwise or differently.

And these defendants further answering say they have been informed and believe, and therefore deny, that the said Derby afterwards or at any time ever caused to be prepared, or did prepare a quitclaim deed or any quitclaim deed, or any deed, to be executed by the said complainants or any or either of them, or by the said John J. Walker, purporting to convey or conveying to said Derby their respective interests or any interests whatever in said real estate or any part thereof; or that he directed these defendants or either of them to retain the said notes and trust deeds until the said complainants should execute and deliver said quitclaim deed to said Derby, as by the said complainants in their said amended bill of complaint in that respect stated and charged. On the contrary thereof, these defendants, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, do say and state the fact to be, that the said John J. Walker caused and procured these defendants to prepare the said quitclaim deed as herein set forth in order that he might procure the proper signatures thereto, and that the said notes were placed in
194 the hands of these defendants by the said John J. Walker and not otherwise or differently.

And these defendants, further answering, admit that on the nineteenth day of March, one thousand eight hundred and sixty-seven, the said John J. Walker paid to these defendants the sum of seven hundred and

fifteen dollars for the commissions due these defendants for selling said real estate to said defendant Derby.

And these defendants, further answering, deny that the said defendant Derby afterwards received of these defendants or either of them, or the said S. H. Kerfoot & Co.; or that these defendants, or either of them, or said S. H. Kerfoot & Co. agreed to or did secure to said defendant Derby, at his request or otherwise, one half, or any part whatever, of the commissions which said John J. Walker as aforesaid paid to these defendants as said defendant Derby's share thereof, by reason of said pretended confederacy, combination, or arrangement, or any other confederacy, combination, or arrangement.

And these defendants, further answering, deny that they or either of them, or the said S. H. Kerfoot & Co. and the said defendant
195 Derby, to further complete such joint purchase or any purchase or to share or own the said real estate, or to express any understanding or agreement by them or either of them secretly or corruptly or covertly made under date of March nineteenth, one thousand eight hundred and sixty-seven, or at any other time, executed or interchangeably delivered to each other the agreement in writing particularly set forth in complainants' said amended bill of complaint. On the contrary thereof, these defendants, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, say and state the facts to be, in regard to the making of said agreement between these defendants and said Derby, that some considerable time subsequent to the nineteenth day of March, 1867, after said defendant Derby had purchased and paid for said real estate as aforesaid, and during and before the time when the said John J. Walker delivered his said confirmatory quitclaim deed as aforesaid to said Derby, said Derby informed defendant Kerfoot that he had offered the said real estate for sale through divers persons and in divers ways, at the rate of one thousand dollars per acre, and was unable to effect a sale thereof at that price; and then and there further stated and told defendant Ker-
196 foot, that these defendants were instrumental in his purchasing the said real estate and that the same would not then sell for the price which he had paid therefor and that he could not sell the same at the rate of one thousand dollars per acre upon credit. Whereupon defendant Kerfoot stated to said Derby that these defendants would purchase one-half of said premises at the rate and upon the terms said Derby purchased the same of said John J. Walker; in answer to which offer said Derby then and there stated and told said defendant Samuel H. Kerfoot, that he would sell these defendants an undivided one-half interest in said real estate at the price and on the terms which he had purchased the same of John J. Walker, as aforesaid, provided these defendants, would, in addition thereto, pay him the sum of three hundred and seventy-five dollars or thereabouts, or an amount equal to one-half of the commissions which said defendants ought to have received from the said John J. Walker, for assisting him in making sale of said premises; to which proposition defendant Kerfoot, on behalf of these defendants then and there assented and agreed. And thereupon the original of the said agreement in the said amended bill of complaint set out was made and antedated to March nineteenth one thousand eight hundred and sixty-seven, as was agreed between defendant Ker-
197 foot and said Derby, to entitle said Derby to interest on the amount which he had paid from the time of such payment, and not as in said complainants' said amended bill of complaint in that respect wrongfully stated and charged, secretly, corruptly, or covertly,

with a view to cover up or hide any misconduct on the part of these defendants, or either of them, as wrongfully alleged.

And these defendants, further answering, say they have no knowledge, information, or belief, only as advised by said original and amended bills of complaint whether on or about the first day of May, one thousand eight hundred and sixty-seven, the said John J. Walker, requested the said other complainants to sign and execute the said quitclaim deed, but these defendants, presume from the fact that the said John J. Walker had, as hereinbefore set forth, promised and agreed to procure the execution of the said quitclaim deed, and from the further fact that they did execute such deed, that they were requested so to do by the said John J. Walker, and therefore admit that they were so requested. But these defendants deny that said complainants were in any manner or way deceived or ignorant of their rights in the premises.

And further, these defendants emphatically deny all combination, confederacy, secret or covert agreement between these defendants or
198 either of them and said William M. Derby, and say that in truth and in fact no such agreement or any agreement whatever in that regard ever existed between these defendants or either of them, and the defendant Derby, other than as hereinbefore set forth.

And these defendants, submit and insist that, under the facts and circumstances hereinbefore set forth, these defendants lawfully could and might enter into said agreement with said Derby and purchase of him an undivided one-half of said real estate in manner aforesaid.

And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge based on information given him at the time by said Walker, and the said J. Ford Pierson on his information and belief, say it is true that, on or about the first day of June, A. D. 1867, but subsequently to the time when defendant Kerfoot handed said note to said Walker, the said defendant Derby bought his said notes for said deferred payments, and in that way paid in land and money the balance of said purchase money, seventeen thousand four hundred dollars, and interest secured by his said notes and trust deeds to and for the use of said complainants, and that said complainants thereupon surrendered up and delivered to said Derby the said securities.

199 And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, deny that the said sum of twenty-five thousand six hundred dollars was a grossly inadequate price for said lands at the time of the sale thereof to the said defendant Derby aforesaid; or that these defendants or either of them, or the said defendant Derby, concealed their knowledge thereof from said complainants or any or either of them; on the contrary thereof, these defendants say and state the fact to be, that the said sum of twenty-five thousand six hundred dollars at the time of the sale of said lands to said Derby as aforesaid, was all that the said land would sell for, and these defendants in like manner deny, that they or either of them, as agents of said complainants, had been offered a better price or better prices by responsible parties
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200 And these defendants, further answe
directed these defendants

fifteen dollars for the commissions due these defendants for selling said real estate to said defendant Derby.

And these defendants, further answering, deny that the said defendant Derby afterwards received of these defendants or either of them, or the said S. H. Kerfoot & Co.; or that these defendants, or either of them, or said S. H. Kerfoot & Co. agreed to or did secure to said defendant Derby, at his request or otherwise, one half, or any part whatever, of the commissions which said John J. Walker as aforesaid paid to these defendants as said defendant Derby's share thereof, by reason of said pretended confederacy, combination, or arrangement, or any other confederacy, combination, or arrangement.

And these defendants, further answering, deny that they or either of them, or the said S. H. Kerfoot & Co. and the said defendant
195 Derby, to further complete such joint purchase or any purchase or to share or own the said real estate, or to express any understanding or agreement by them or either of them secretly or corruptly or covertly made under date of March nineteenth, one thousand eight hundred and sixty-seven, or at any other time, executed or interchangeably delivered to each other the agreement in writing particularly set forth in complainants' said amended bill of complaint. On the contrary thereof, these defendants, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, say and state the facts to be, in regard to the making of said agreement between these defendants and said Derby, that some considerable time subsequent to the nineteenth day of March, 1867, after said defendant Derby had purchased and paid for said real estate as aforesaid, and during and before the time when the said John J. Walker delivered his said confirmatory quitclaim deed as aforesaid to said Derby, said Derby informed defendant Kerfoot that he had offered the said real estate for sale through divers persons and in divers ways, at the rate of one thousand dollars per acre, and was unable to effect a sale thereof at that price; and then and there further stated and told defendant Ker-
196 foot, that these defendants were instrumental in his purchasing the said real estate and that the same would not then sell for the price which he had paid therefor and that he could not sell the same at the rate of one thousand dollars per acre upon credit. Whereupon defendant Kerfoot stated to said Derby that these defendants would purchase one-half of said premises at the rate and upon the terms said Derby purchased the same of said John J. Walker; in answer to which offer said Derby then and there stated and told said defendant Samuel H. Kerfoot, that he would sell these defendants an undivided one-half interest in said real estate at the price and on the terms which he had purchased the same of John J. Walker, as aforesaid, provided these defendants, would, in addition thereto, pay him the sum of three hundred and seventy-five dollars or thereabouts, or an amount equal to one-half of the commissions which said defendants ought to have received from the said John J. Walker, for assisting him in making sale of said premises; to which proposition defendant Kerfoot, on behalf of these defendants then and there assented and agreed. And thereupon the original of the said agreement in the said amended bill of complaint set out was made and antedated to March nineteenth one thousand eight hundred and sixty-seven, as was agreed between defendant Ker-
197 foot and said Derby, to entitle said Derby to interest on the amount which he had paid from the time of such payment, and not as in said complainants' said amended bill of complaint in that respect wrongfully stated and charged, secretly, corruptly, or covertly,

with a view to cover up or hide any misconduct on the part of these defendants, or either of them, as wrongfully alleged.

And these defendants, further answering, say they have no knowledge, information, or belief, only as advised by said original and amended bills of complaint whether on or about the first day of May, one thousand eight hundred and sixty-seven, the said John J. Walker, requested the said other complainants to sign and execute the said quitclaim deed, but these defendants, presume from the fact that the said John J. Walker had, as hereinbefore set forth, promised and agreed to procure the execution of the said quitclaim deed, and from the further fact that they did execute such deed, that they were requested so to do by the said John J. Walker, and therefore admit that they were so requested. But these defendants deny that said complainants were in any manner or way deceived or ignorant of their rights in the premises.

And further, these defendants emphatically deny all combination, confederacy, secret or covert agreement between these defendants or
198 either of them and said William M. Derby, and say that in truth and in fact no such agreement or any agreement whatever in that regard ever existed between these defendants or either of them, and the defendant Derby, other than as hereinbefore set forth.

And these defendants, submit and insist that, under the facts and circumstances hereinbefore set forth, these defendants lawfully could and might enter into said agreement with said Derby and purchase of him an undivided one-half of said real estate in manner aforesaid.

And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge based on information given him at the time by said Walker, and the said J. Ford Pierson on his information and belief, say it is true that, on or about the first day of June, A. D. 1867, but subsequently to the time when defendant Kerfoot handed said note to said Walker, the said defendant Derby bought his said notes for said deferred payments, and in that way paid in land and money the balance of said purchase money, seventeen thousand four hundred dollars, and interest secured by his said notes and trust deeds to and for the use of said complainants, and that said complainants thereupon surrendered up and delivered to said Derby the said securities.

199 And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, deny that the said sum of twenty-five thousand six hundred dollars was a grossly inadequate price for said lands at the time of the sale thereof to the said defendant Derby aforesaid; or that these defendants or either of them, or the said defendant Derby, concealed their knowledge thereof from said complainants or any or either of them; on the contrary thereof, these defendants say and state the fact to be, that the said sum of twenty-five thousand six hundred dollars at the time of the sale of said lands to said Derby as aforesaid, was all that the said land would sell for, and these defendants in like manner deny, that they or either of them, as agents of said complainants, had been offered a better price or better prices by responsible parties, or by any party or parties whomsoever, or that the said defendant Derby well knew or at all knew, that these defendants or either of them had been offered a better price or better prices for said real estate.

And these defendants, further answering, admit that the said written agreement so as aforesaid made and entered into between these defendants and said Derby, was duly recorded in the recorder's office of Cook County, in book 494, page 292.

200 And these defendants, further answering, admit that from the

time of the making of the agreement, as hereinbefore set forth, between these defendants and said Derby, until the fifth day of September, 1868, these defendants, under said agreement, did claim to be the owners of the undivided one-half of all said real estate; but these defendant deny that the sum of $375, mentioned in said agreement, was intended to or did represent the share of the commissions or any commissions for making sale of said property, and by complainants or any of them paid to these defendants, which said Derby was entitled to by virtue of the covinous, corrupt, or fraudulent combination, in said bill alleged, or by virtue of any covinous, corrupt or fraudulent combination, agreement or arrangement; on the contrary thereof, these defendants say and state that the facts in regard thereto are as by these defendants in this their answer herein before set forth, and not otherwise or differently; and these defendants admit that, according to the tenor and effect of said agreement, these defendants made tender of the money, with interest thereon from said nineteenth day of March, 1867, and securities mentioned in said agreement to said Derby, and offered to do and perform everything on their part to be done and performed; and that the said Derby refused to do and perform all or anything he was in duty bound to do and
201 perform according to the terms and conditions, and the tenor and effect of said agreement; and that afterwards, and before the fifth day of September, 1868, these defendants caused to be prepared their bill of complaint, as complainants, against the said defendant Derby, of the general purport, tenor, and effect, as set forth in Exhibit "A," annexed to said bill of complaint, which said bill was submitted to these defendants for revision and correction, but was never revised, corrected or filed for the reason that prior thereto, and on or about the fifth day of September, 1868, an adjustment of the matter was had between these defendants and said Derby, as herein set forth.

And these defendants, further answering, admit that defendant Pierson had theretofore caused to be made and filed in said recorder's office of Cook County, his affidavit of the tenor and effect set forth in Exhibit "B" annexed to said amended bill of complaint.

And these defendants, further answering, deny that, since said agreement between these defendants and said Derby, these defendants and said Derby have resorted to various, or any pretexts, shifts, excuses, assertions or subterfuges to conceal or cover up the interest of these defendants acquired and secured to them under said agreement.

202 And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge, and said J. Ford Pierson on his information and belief, admit that said John J. Walker, wrote defendant Kerfoot a letter of date February twenty-fourth, 1868, in the words and figures set forth in Exhibit "C," annexed to said amended bill; and that defendant Kerfoot afterwards, under date of February twenty-ninth, 1868, answered the said John J. Walker's letter in the manner and form, and in the words and figures set forth in Exhibit "D," annexed to said amended bill, to which exhibit these defendants pray leave to refer.

And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge, and the said J. Ford Pierson on his information and belief, deny that defendant Kerfoot was the agent of said Arthur F. Hopkins' during his lifetime touching said property, or had charge thereof as such agent, as the letter marked Exhibit "E," in said amended bill of complaint shews; that said Kerfoot, on the August 31st, 1866, for the first time knew what, if any, lands belonged to the said Arthur F. Hopkins' estate, and that J. W. Pryor, for whom alone said

Kerfoot had always acted touching said lands, then gave said Kerfoot the information which enabled him (said Kerfoot) to give his answer of
203 August 31st, to a letter previously received from said Walker. And further, these defendants deny that the sale of the same was made by or through the counsel, advice, or agency of these defendants, or that the same was well known or understood by defendant Derby, or that said complainants derived all their knowledge of said property from these defendants or defendant Kerfoot after the decease of said Arthur F. Hopkins. On the contrary thereof, these defendants say that the facts in respect to the sale of said real estate by said John J. Walker to said Derby are precisely as by these defendants in this their answer hereinbefore set forth, and not otherwise or differently.

And these defendants, further answering, the said Kerfoot of his own knowledge, and the said Pierson of his information and belief, deny that the said John J. Walker on or about the first day of March, 1867, informed defendant Kerfoot that it had become necessary to raise for the purpose of the estate of the said Hopkins, immediately, the sum of $10,000 in cash out of the property aforesaid, by predicating a loan thereon, or that said John J. Walker to that end then or there solicited or requested these defendants, or either of them, to obtain a loan thereon of $10,000 for the benefit of complainants; or that these defendants advised said John J. Walker, they could not procure that amount
204 on said property at that time; and further, these defendants deny that, had they exerted themselves to obtain said loan, or had it then been make known to capitalists that a loan of $10,000 was or had been desired on said property, the same could easily have been obtained in Chicago; and these defendants do say, though they have no knowledge of any proposal on the part of said Walker to borrow money on said premises, that they are convinced that no loan could have been negotiated on the same, for the reason that said premises were outside of the city of Chicago and wholly unimproved, and the title thereto having to be made by an executor, both points being objectionable to lenders of money. And these defendants in like manner deny that they or either of them with intent to deceive the complainants and said John J. Walker or either of them in the premises, or to obtain an interest in the property, counselled or advised said John J. Walker in view of the complainants' necessities, that the only way said $10,000 could be raised from said property at that time, was to sell said property, or that it was thereupon or therefore decided to sell and dispose of said property at the highest marked price; or that thereupon said John J. Walker directed these defendants, before selling said property, to advertize the same for sale, or that he was subsequently informed by these defendants or either of them, or that said complainant John J.
205 Walker believed that the same was then or there duly advertized by these defendants; or that complainants cannot learn that said property was so advertized for sale at all, before making said sale, or that they or either of them, in any manner or way, kept the same out of market for the purpose of acquiring an interest therein with said Derby or any other person, or that the complainants depended or relied solely upon the acknowledged skill and ability of these defendants. On the contrary thereof, these defendants, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, do say and state the facts to be, that said John J. Walker, after fully advising himself by consultation with one David Gage of the said city of Chicago, to whom said Walker brought letters of introduction, and others, as he informed defendant Kerfoot, directed these defendants

to sell the said property if they could, which these defendants, after a great deal of trouble, succeeded in doing to said defendant Derby as hereinbefore set forth.

And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, admit that they and each of them represented to said John J. Walker in the month of March, 1867, that that was a bad time to sell said property; but these defendants deny that said
206 representation was false or untrue, or made for the purpose of inducing said complainants or any of them to sell said property at the price which said Derby proposed to pay therefor. On the contrary thereof, these defendants do say and state the fact to be, that said representation was true in fact, and that the same was made by these defendants in good faith, verily believing as they did, and as time as demonstrated, that if said complainants would hold said property until after the opening of navigation, at which time business would revive and money be more plenty, they could and would obtain therefor a much better and greater price. And further, these defendants do say, that at that time the defendant Samuel H. Kerfoot accompanied the said John J. Walker to look over and inspect the said land prior to the sale thereof to said Derby, and said Kerfoot did advise said Walker not to sell if he could help it, at least to keep the land till the grass would be green on it," when it would sell much better than, as it then was, covered with ice, snow, and slush.

And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, deny that the said letter of February 29th, 1868, was written by the said Kerfoot for the purpose of covering up or
207 concealing the interest or any interest of these defendants in the premises, or to allay the suspicions of said Walker, or that the statement made by defendant Kerfoot in said letter of February 29th, 1868, to wit: "1st. He never had any offer from any person whatever of $1,200 per acre, or any more than you received from the land of the Hopkins' estate here sold Derby," was or is false or untrue, or at that time was well known or at all known to these defendants or either of them, to be false or untrue; or that the statement in said letter. "2nd. Neither I, my partner, or my firm had any interest in the purchase of that land from you," was or is false or untrue. On the contrary thereof, these defendants do say and here repeat the fact to be, that said statements so made, and each and every statement made by said Kerfoot in said letter of February 29th, 1868, were and are true and correct, and that the facts in relation thereto, are fully and faithfully stated and set forth in said letter and hereinbefore in this their said answer.

And these defendants, further answering, the said Samuel H. Kerfoot of his own knowledge and the said J. Ford Pierson on his information and belief, deny that the statement of said defendant Kerfoot, that said lands or any part thereof, were of so much less value, by reason of any slough existing thereon, was or is untrue or false, or that
208 the market value of all or any of said lands at the time of the said sale to Derby was at least $1,200 per acre. On the contrary thereof, these defendants do say and state the fact to be, that a great portion of the undivided half of the said 20 acres situate west of State street was a slough which greatly depreciated its value; and that taking the whole of the said undivided half of said 20 acres together, it was not worth, and the said John J. Walker, at the time of the sale

sale thereof to the said Derby as aforesaid, knew that he could not have obtained, a greater price therefor than paid by the said Derby as aforesaid.

And these defendants, further answering, admit that said defendant William M. Derby, did utterly refuse to comply with his said agreement in writing with these defendants of date March 19, 1867. And that these defendants were compelled to and did cause to be prepared a bill of complaint substantially as marked Exhibit "A," annexed to said amended bill of complaint, but that said bill of complaint, marked Exhibit "A," was as hereinbefore stated never completed, the matter in dispute between these defendants and said Derby having been adjusted before the said bill was revised, corrected, or filed by these defendants. But these defendants deny that well knowing or understanding, or at all knowing or understanding, that they were agents for complainants,
209 or being well or sufficiently advised that by reason of that fact, these defendants had in securing or reserving to themselves the benefit of a half interest in said property, upon the same terms or conditions that said Derby had through them obtained the same of and from complainants, the defendant Derby refused to comply with said agreement; or that said defendant Derby refused to comply therewith for any other or different cause or reason than as by these defendants hereinbefore in this their answer stated and set forth.

And these defendants, further answering, deny that, by producing or exhibiting said bill of complaint, or informing the said Derby thereof, or of their intention to file the same in court, these defendants or either of them effected a compromise with said Derby, or that said Derby yielded or paid them a large sum of money, or further promised or agreed to yield or pay to these defendants or either of them a share of the profits derived from said land as the same should be sold or disposed of.

And these defendants, further answering, deny that defendant Henry S. Monroe now has the said notes and deeds executed to him as trustee by the said Kerfoot and Pierson. On the contrary thereof, having been tendered to said Derby and by him declined, the said trust deeds
210 and notes were never deliverd to said Derby, Monroe, or any one else, but the same are now in the possession of these defendants, ready to be produced as this honorable court shall direct.

And the defendants, further answering, say they have been informed and believe, and therefore admit, that all the defendants named in said amended bill, except these defendants, have, or claim to have, some interest in the property which belonged to the complainants as aforesaid on the first day of March, 1867, and that said defendants may owe to the said Derby; but these defendants deny that they or either of them owe these defendants the purchase money therefor. But these defendants say they do not know, save as appears by said bill, what interest the said parties have in said lands, or the amount of money now due the said Derby thereon.

And the defendants, further answering, deny that, well knowing or understanding, or at all knowing or understanding, that the said transaction was fraudulent or void as against the complainants, the said Derby connived with these defendants or either of them, or to that end, for a large sum of money, to wit, the sum of $5,000, or any other sum or sums whatever, or any valuable consideration, to cheat or de-
211 fraud complainants in the premises on the fifth day of September, A. D. 1868, or at any other time, these defendants, by deed of quitclaim of that date, ostensibly transferred or conveyed their said

interest in said premises to said Derby; and these defendants also deny that they or either of them and said Derby have all the while, or at any time since the said 16th day of March, been, or still are, in some way or manner interested in said lands or any part thereof, or in the proceeds thereof.

And these defendants, further answering, on their information and belief, deny that, of the said real estate purchased of said complainants, the said Derby is now in possession or the owner of the east half of block one, the west half of block five, or lots one or two aforesaid.

These defendants, further answering, say they do not know and cannot answer as to what interest the said defendant Derby or any of the other defendants have in said property. And these defendants further say they have no knowledge or information, and do not know except as advized by the said complainants' said amended bill of complaint, whether said complainants are informed or believe that the said Derby is about to dispose or convert the same into cash, claiming it as his own property; but these defendants do say they have been informed,
212 and so understand and believe, that the said Derby does claim and believe himself the owner thereof, so far as not already disposed of.

And these defendants, further answering, say they do not know whether or , on or about the 9th day of September, 1868, by deed of that date, said Derby sold or conveyed to one Alonzo Rawson the whole of block six, the east half of block five, or the said tract in section four, for the sum of eighty-six thousand dollars; but these defendants say that the west half of block six, aforesaid, was not contained in, or any part of, the purchase by said Derby from said John J. Walker.

And these defendants, further answering, say they do not know whether, on or about the first of August, A. D. 1868, the said defendant Derby, by deed of that date, sold or conveyed said block four to one Samuel Wing, or received therefor thirty-four thousand dollars.

And these defendants further deny that they or either of them hold, or are in any way directly or indirectly interested in, any securities or security or proceeds of said sales, or any part thereof; but, so far as they know and have been informed, they believe that the said William M. Derby holds the proceeds and securities for said sales, and that he claims the same as his own property.

213 And these defendants, further answering, admit that said Derby, on the twenty-fourth day of September, A. D. 1868, executed a mortgage on the west half of block five, aforesaid, to one Joseph B. Shepard, to secure the sum of ten thousand dollars; but whether the said Derby threatens to encumber the balance of said lands, or to transfer or dispose of all or any part of said lands, securities, or moneys to prevent complainants having adequate relief in the premises, as alleged in said bill, or for any other purpose, these defendants have no knowledge, notice, or information, and therefore can neither admit or deny the same.

And these defendants, further answering, deny that, from the first day of July, 1868, all the while, or any time, or now, all said property so owned by the complainants was, has been, or is worth the just or full sum of three hundred thousand dollars.

And these defendants, further answering, deny that they or either of them have, either directly or indirectly, received from said purchasers or incumbrances aforesaid any part or portion of said property securities, or any money for the same or from the same, or that the same or any part or portion thereof is now secured to be paid to these defendants, or

either of them, or held either in trust or otherwise for them, or either of them, or for the firm of S. H. Kerfoot & Co., either directly or
214 indirectly; but these defendants do say and state the fact to be that said Derby, in making sales of said property, found himself unable to satisfy purchasers in regard to his title, by reason of the recording of said agreement between said Derby and these defendants, mentioned in Exhibit "A" to said amended bill, and also by reason of the recording of said affidavit in said amended bill, marked Exhibit "B," wherefore said Derby made overtures of settlement to these defendants, the result of which was that said Derby paid these defendants the sum of about seven thousand (7,000) dollars, and by request
215 of these defendants, (there then being outstanding an unsettled judgment against defendant Kerfoot, which would have embarrassed these defendants in the sale thereof had the title then been taken in the names of these defendants,) deeded the west half of said block five to the defendant Joseph B. Shepard, and who, on the twenty-fourth day of September, 1868, by arrangement of these defendants, sold the same for the sum of twenty-one thousand dollars to one Henry H. Honore, at whose request the said Shepard made the deed thereof to said Derby, with whom said Honore had made arrangements for the cash payment on said property, and wanted to secure said Derby therefor; and for the balance of the purchase price the said Honore made his two promissory notes for five thousand (5,000) dollars each, payable, respectively, from said date in one or two years, with interest at eight per cent. per annum, and to secure the payment of said notes said Derby made a mortgage on the said property; which notes were, at the instance of these defendants, subsequently sold, and the proceeds paid over to these defendants, who now have no interest in said notes, directly or indirectly, and do not know who owns or holds the same.

And these defendants, answering further, say that, so far as they know, they admit that the complainants John J. Walker and
216 Maria Walker were, on the first day of March, one thousand eight hundred and sixty-seven, the owners of said real estate, each one-fourth, and that John J. Walker, executor, and the other complainants were, on that day, the owners of the undivided two-fourths thereof.

And these defendants, answering further, say it is true that the complainants employed these defendants, acting as the firm of S. H. Kerfoot & Co., as their agents to sell said real estate, and that the account stated and receipt are truly and correctly set forth, and that said John J. Walker, executor, did pay these defendants eight hundred and thirty-six dollars and twenty-five cents, as in said account set forth.

And these defendants, answering further, say they did not, nor did either of them, ever in any manner or way, or at any time whatever, agree to divide or share such commissions, or money, or any part thereof, with defendant William M. Derby, and that said commissions or any part thereof, were not and have not in any manner or way whatever been so divided.

And these defendants, answering further, say that an agreement in writing was made between said Derby and these defendants, of the tenor and effect set forth in Exhibit "A," to said complainants' said amended bill of complaint.

217 And these defendants, answering further, the said Samuel H. Kerfoot on his information and belief and said J. Ford Pierson of his own knowledge, say that said J. Ford Pierson made affidavit as set forth in Exhibit "B."

And these defendants, answering further, say that the facts set forth in said affidavit were true.

And these defendants, answering further, say that it is true that these defendants caused a bill of complaint to be prepared, which bill was prepared as set forth in Exhibit "A," and submitted to these defendants by their solicitors, for the purpose of reading, revising, and correcting, but the same never was revised or corrected, for the reason that said Derby adjusted and settled with these defendants prior to such revision as hereinbefore set forth.

And these defendants, answering further, say that such bill of complaint, as prepared and submitted to these defendants for revision and correction, by their solictors, was substantially of the form, substance, and effect as set forth in Exhibit "A."

And these defendants, answering further, the said Samuel H. Kerfoot of his own knowledge and said J. Ford Pierson on his information and belief, say that it is not true that the original agreement
218 (which agreement these defendants upon settlement delivered to defendant Derby and are therefore unable to produce) was reduced to writing by defendant Derby, instead of defendant Kerfoot, but these defendants do say, that said Kerfoot prepared hastily and roughly the original paper which was then amended and rewritten by said Derby, but these defendant do say, that the words "I," "me," therein refer to defendant Derby, and that the word "Pearson" therein, does refer to defendant J. Ford Pierson.

And these defendants, answering further, say that it is true that the original agreement was assigned to defendant Pierson by defendant Kerfoot, as stated in Exhibit "A," and that both were recorded, and that the exemplification thereof on file is a true copy.

And these defendants, answering further, say that they do not know and therefore cannot answer whether the quitclaim deed from complainants to defendant Derby, conveying the said real estate of date March sixteenth, A. D. 1867, was delivered to defendant Derby, on or about the thirtieth day of May, 1867, but presume it was.

And these defendants, answering further, say that when said quitclaim deed was delivered to defendant Derby, the said agreement between these defendants and Derby was subsisting in writing, bearing date March nineteenth, 1867.

219 And these defendants, answering further, on their knowledge, & information derived from said Walker, and belief based on such information, say that, on the nineteenth of March, 1867, the time of the consummation of the original purchase and delivery of the conveyance by said Walker to said Derby, there was paid to said Walker, by said Derby, the sum of eighty-two hundred (8,200) dollars, the cash payment on said purchase. That at the time of the delivery by said Walker to said Derby of said confirmatory quitclaim deed, the notes of said Derby given to said Walker, at the time of such consummation for the deferred payments on said purchase, and by said Walker placed in escrow in the hands of these defendants, were handed to said Walker according to the terms of said escrow, and that some days after such handing by these defendants to said Walker, the said Walker sold, as he informed defendant Kerfoot, to said Derby, said notes for ten thousand dollars cash and some land in the 13th interrogatory described.

And these defendants, answering further, say that it is a fact that the purchase price of said purchase by Derby from Walker, was paid on the nineteenth day of March, 1867, eighty-two (8,200) hundred dollars in cash, and the balance, seventeen thousand four hundred (17,400)

220 dollars by notes of said Derby secured by deeds of trust on said property.

And these defendants, answering further, say that they admit that said Walker wrote the letter as stated in Exhibit "C" to said Kerfoot.

And these defendants, answering further, say that it is true that said Kerfoot wrote to complainant Walker the several letters, as stated in Exhibit "E," "F," "G," "D."

And these defendants, answering further, say that, at the time of writing the letter set forth in Exhibit "D," the facts stated in Exhibit "B" were well known to defendant Kerfoot.

And these defendants, answering further, say there were steps taken by these defendants both before and after February 29th, 1868, to enforce their rights under said agreement between Derby and these defendants, which steps were, among other things, the preparation of Exhibit "A" and submission thereof to these defendants for revision and correction by their solicitor, as hereinbefore set forth.

And these defendants, answering further, say that, in consideration for said quitclaim deed, the defendant Derby did pay these defendants the sum of about seven thousand (7,000) dollars in cash; and, at their request deeded to the defendant J. B. Shepard, the west half of

221 block five, Pryor and Hopkins' subdivision, as hereinbefore set forth.

And these defendants, answering further, say that, on the fifth day of September, 1868, the actual cash value of all said real estate was not the sum of three hundred thousand (300,000) dollars and upwards; on the contrary thereof, these defendants say that the actual cash value thereof at that time did not exceed one hundred and twenty thousand (120,000) dollars, but that in their opinion a purchaser could not then have been found at one hundred thousand (100,000) cash.

And these defendants, answering further, say that they do not know, and therefore cannot answer, whether defendant Derby, has since then sold the said property, in manner and form to the other defendants, as stated in the premises.

And these defendants, answering further, say that they have no interest whatever, directly or indirectly, in said premises, or any part thereof, or in any proceeds or securities arising therefrom, and that they do not know who or to what extent any persons are interested in said premises or the proceeds thereof.

And these defendants, answering further, say that they do not know, and therefore cannot answer, whether the legal title to, or posses-

222 sion of, the said east half of block one, west half of block five, or lots one, two, twenty-three, or twenty-four, are in defendant Derby, or who has the title or possession thereof, or part thereof.

And these defendants, answering further, say that they do not know, and therefore cannot answer, whether said Derby has sold said property, or any portion thereof, or if sold what security or securities he holds therefor.

And these defendants, answering further, say that they do not know, and therefore cannot answer, whether defendant Derby has incumbered any part or portion of said property, except the west half of said block five, as hereinbefore set forth.

And these defendants, answering further, say that, in consideration for their said quitclaim deed of date September fifth, 1868, they have received directly from said Derby the said sum of about seven thousand (7,000) dollars, and twenty-one thousand, (21,000,) the proceeds of the sale by said Shepard of the said west half of block five, as here-

inbefore set forth, but they have not nor has either of them received, directly or indirectly, from said purchasers or incumbrances any part or portion of said property, securities, or any money for the same, or from the same, and that no part or portion thereof is in any manner or way secured to be paid to these defendants or either of them.

223 And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged. Without this that there is any other matter or thing in the said complainants' said amended bill of complaint contained, material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and having now fully answered, they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SAML. H. KERFOOT.
J. FORD PIERSON.

JNO. J. MCKINNON,
Sol. & Counsel.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Samuel H. Kerfoot and J. Ford Pierson, having been duly sworn, say that they are defendants whose names are subscribed to the foregoing answer; that they have heard the said answer read and knows the contents thereof; that the said answer is true of their own

224 knowledge, except as to the matters and things therein stated and set forth on information and belief, and as to those matters and things they believe it to be true. And further saith not.

SAM'L H. KERFOOT.
J. FORD PIERSON.

Subscribed and sworn to before me, this 3*th* day November, 1869.
[NOTARIAL SEAL.] A. E. GUILD, JR.,
Notary Public.

(Endorsed:) Filed Nov. 4, 1869. Wm. H. Bradley, cl'k.

225 *Answer of W. M. Derby.*

In the circuit court of the United States for the northern district of Illinois.—In chancery.

The answer of William M. Derby, defendant, to the amended bill of complaint of John J. Walker, John J. Walker, executor, Maria Walker, William Barnwell, Mary M. Barnwell, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, complainants.

This defendant now and at all times hereafter saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainants' said amended bill of complaint contained, for answer thereunto, or unto so much and such part or parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, he, this defendant, answering, saith:

He admits that heretofore and on or about the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven,
226 the complainants John J. Walker, John J. Walker, executor of the last will and testament of Arthur F. Hopkins, deceased, and Maria Walker aforesaid were owners in fee simple and that the complainants Cornelia C. Lowe, wife of Henry A. Lowe aforesaid, & Mary M. Barnwell, wife of William Barnwell aforesaid, and Kate E. Oliver, wife of Stark H. Oliver, aforesaid, and Augusta H. Rice, Juliette A. Hopkins and William L. Hopkins, aforesaid, as legatees, under and by virtue of the said last will and testament, were interested in the following-described land and real estate, situate in the city of Chicago, in the county of Cook, and State of Illinois, that is to say, an equal undivided half part of the first following-described tract of land, known as that part of the northeast quarter of section four, (4,) township thirty-eight (38) north, of range fourteen (14) east of third principal meridian, bounded and described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad seventy-four (74) rods, to the north line of said quarter section; thence east on said line to the place of beginning. Also the whole of the following-described pieces or parcels of land, to wit: The east half of block numbered one (1) and the
227 east half of block numbered six, (6,) the whole of blocks numbered five (5) and four, (4,) and lots numbered one, (1,) two, (2,) twenty-three, (23,) and twenty-four, (24,) in block numbered (12,) all in Pryor and Hopkins' subdivisions of the west half of the northwest quarter of section numbered three, (3,) in township and range aforesaid; which lands were subject to certain rights and privileges then enjoyed by the Union Stock Yards and Transit Company; and that although the legal title to all said real estate was in the said Arthur F. Hopkins, at the time of his decease, and that by virtue of the facts set forth in and of a certain declaration of trust executed by the said Hopkins in his lifetime, in the words and figures in said amended bill set forth, the complainant John J. Walker was the owner of the undivided one-fourth; complainant Maria Walker was the owner of another undivided one-fourth, and complainant John J. Walker, executor, and the other complainants named were jointly the owners of the other undivided two-fourths of said real estate on said day.

And this defendant, further answering, saith that he is informed and believes, and therefore admits that afterwards on the said first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, at Chicago aforesaid, complainants, by and through the complainant John J. Walker as agent and as executor aforesaid, on
228 their behalf and for himself, employed Samuel H. Kerfoot and J. Ford Pierson who then and there were doing business as real-estate agents and loan brokers under the firm name and style of "S. H. Kerfoot & Co," to sell said real estate for the said complainants, but this defendant has no knowledge or information, only as advised by the said complainants' said original and amended bills of complaint, whether to that end, or for any other, the said John J. Walker as agent and executor aforesaid agreed to pay said S. H. Kerfoot & Co. for their services and commissions in that behalf five per cent., or any other sum or sums whatever, of and on the first three thousand dollars, and two and a half per cent., or any other sum or sums whatever on the balance of the purchase money to be had for said real estate on sale thereof, through said S. H. Kerfoot & Co., or any or either of the members of said firm;

wherefore this defendant cannot either admit or deny the said complainants' said amended bill of complaint in that respect.

And this defendant further says that he has no knowledge or information, only as advised by said complainants' said original and amended bills of complaint, whether the said S. H. Kerfoot & Co., or either of the members of said firm, upon any consideration whatever, undertook or agreed to and with the said complainants, or any or either of them, to serve the said complainants, or any or either of them, faithfully, and to the best of their ability, in making sale of said real estate.

229 But this defendant doth say, of his own knowledge, that so far as the said S. H. Kerfoot & Co. were concerned in making sale of said real estate for and as the agents of said complainants, they did honestly, faithfully, and to the best of their ability, serve the said complainants.

And this defendant, further answering, denies that, in breach of the trust or any trust in them reposed by the said complainants, or any one or either of them, the said S. H. Kerfoot & Co., or either of the members of said firm, contrary to their duty, or to equity and good conscience in that behalf, secretly or covertly combined or confederated, or in any manner or way united, combined, or confederated, with this defendant; or that on or about the first day of March, in the year of our Lord one thousand eight hundred and sixty-seven, at the city of Chicago, or at any other time or place whatever, this defendant took any undue advantage, or any advantage whatever, of the relations of trust or confidence, or of any relation whatever, that then or ever existed between the said S. H. Kerfoot & Co., or either of the members of said firm, and the said complainants, or any or either of them, in the premises. And, further, this defendant denies that he agreed to become, or that he ever did, in any manner or way, become, or agree to become, with the said S.

230 H. Kerfoot & Co., or either of the members of said firm, or any other person or persons whatever, purchaser or joint owner of said real estate, or any part thereof, at a price far below its then cash value, or at any price whatever. And this defendant further denies that to that end, or any other end or purpose whatever, this defendant, on the said day and year, or at any other time, united, confederated, or combined with said S. H. Kerfoot & Co., or either of the members of said firm, or with any one else, for the purpose of effecting or concealing his purchase of said premises from said complainants, or either of them; or that this defendant, in any manner or way, arranged or agreed with said S. H. Kerfoot & Co., or any of the members of said firm, to hold out to said complainants, or any of them, that this defendant was the sole purchaser of said premises, at the sum of twenty-five thousand six hundred dollars, or at any other price. But this defendant avers the fact to be, that he was the sole and only purchaser of said premises, at the said price; and, further, this defendant denies that, pursuant to any false or fraudulent arrangements, agreement, combination, or confederacy between this defendant and said S. H. Kerfoot & Co., or either of the members of said firm, the said S. H. Kerfoot & Co., or either of the members of said firm, held out, or could have held out, to the said com

231 plainants, or any of them, that this defendant was the sole purchaser of said premises, at the price aforesaid, with a view to deceive or defraud the said complainants, as stated and charged in their said amended bill of complaint, because this defendant avers the fact to be that he was the sole purchaser thereof, without any combination or confederacy with said S. H. Kerfoot & Co., or either of the members of said firm, or any one else.

And this defendant further denies that in that way or by such means this defendant procured on or about the 19th day of March, 1867, or at any other time, from said complainant, John J. Walker, executor as aforesaid, a deed of all said real estate purporting to convey the said real estate to this defendant to bear date the sixteenth day of the said month of March, to be acknowledged before the defendant, Samuel H. Kerfoot, justice of the peace, or afterwards caused the same to be recorded in the recorder's office of Cook County, as in said amended bill in that behalf as alleged. But on the contrary thereof, this defendant doth say & state the fact to be, that, on or about the third day of March, in the year of our Lord one thousand eight hundred and sixty-seven, Samuel H. Kerfoot one of the members of said firm of S. H. Kerfoot & Co., informed and advised this defendant that they,
232 the said S. H. Kerfoot & Co., had the land in said amended bill and hereinbefore described for sale at their office at the price or sum of one thousand dollars per acre cash, and then and there requested this defendant to purchase the same at that price, which to do this defendant then and there refused, but then and there stated to the said S. H. Kerfoot that he would purchase the said real estate and pay therefor such price as in his judgment it was worth. Whereupon the said Samuel H. Kerfoot requested this defendant to make a cash offer for the said land, which to do this defendant also refused, and then and there stated to the said S. H. Kerfoot that he would not pay cash for said premises, or for any other premises, unless he could purchase at a good bargain; thereupon the said S. H. Kerfoot stated and told this defendant that complainant, John J. Walker, part owner and agent for the owners of said premises was then in the city of Chicago for the purpose of selling said land and real estate, and then and there requested this defendant to go with him, said S. H. Kerfoot, and talk with the said John J. Walker personally in regard thereto, which to do this defendant *and* then and there did go, and saw and talked with the said John J. Walker at the office of said S. H. Kerfoot & Co., in Chi-
233 cago aforesaid, at which time and place the said John J. Walker stated and told this defendant that he, said John J. Walker, as owner and agent of the owners of said premises, had come to the city of Chicago for the express purpose of selling the said premises, and then and there requested this defendant to make an offer therefor, which to do, however, this defendant declined, until such time as this defendant could go upon the land, look it over, and advise himself as to its value. And this defendant further says that, after so meeting and talking with the said John J. Walker, this defendant did go upon the said land and carefully looked it over, and advised himself in regard to its value as well as he then could, and, subsequently, on or about the sixth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, after so examining the said premises and advising himself in regard to the value thereof, this defendant again met the said John J. Walker at the said office of S. H. Kerfoot & Co., in the city of Chicago aforesaid, and then and there offered to purchase the said premises of and from the said John J. Walker, and of and from the other owners thereof and parties interested therein, and to pay therefor the sum of twenty-five thousand six hundred dollars, in payments as follows, which is to say: one-quarter cash, and the balance in three equal
234 annual instalments, to become due in one, two, and three years respectively, with interest at six per cent.; which offer the said John J. Walker then and there refused to accept, but then and there proposed and offered to sell the said lands and premises to this defendant

at and for the said price or sum of twenty-five thousand six hundred dollars, to be paid eight thousand two hundred dollars cash in hand, and the balance in three equal annual payments to become due in one, two, and three years, with interest at six per cent. per annum, which said offer of the said John J. Walker this defendant then and there accepted, and thereupon, at the instance and request of the said John J. Walker, and as evidence of the said bargain and sale, an agreement in writing was made and entered into between the said John J. Walker and the defendant, wherein and whereby it was, among other things, acknowledged and agreed that for value received, John J. Walker, of Mobile, Alabama, as executor of the estate of Arthur F. Hopkins, deceased, thereby agreed to sell to this defendant, who, for value received, agreed to buy of said Walker as such executor, the property of said estate, lying in section three and four in township thirty-eight north, of range fourteen east of third principal meridian, being the east half of blocks
235 one and six and the whole of blocks four and five, and lots one, two, twenty-three, and twenty-four of block twelve, all in Prior and Hopkins' subdivision of west half of the northwest quarter of section three of said township and range; and also an undivided one-half of the property aforesaid described as in section four, owned jointly by said estate and one Ackerly, lying in the northeast corner of said section four, township and range aforesaid, the price of said property being twenty-five thousand six hundred dollars, payable eight thousand two hundred dollars on delivery of a good and sufficient deed conveying said premises to this defendant free and clear of all incumbrances, and the balance in three equal annual payments, with interest at six per cent. per annum from date thereof; the notes for said deferred payments to be secured by mortgage of this defendant with the power of sale therein contained, duly executed and conveying the said premises thereby sold—all the papers to be of even date with the said agreement, as by the said agreement under the hands and seals of the said John J. Walker as executor aforesaid, and this defendant, when produced, reference being thereto had, will more fully appear, which agreement after the making and execution thereof, was by the agreement and with the consent of the said John J. Walker and this defendant, delivered
236 to the said Samuel H. Kerfoot, to be by him held in escrow until the deed therein mentioned should be made and delivered to this defendant and the title to said real estate should be examined.

And this defendant further says and states the fact to be, that soon after the making and delivery of said agreement in escrow as aforesaid, the said John J. Walker furnished to this defendant an abstract of title to said real estate, to be examined by this defendant, which abstract of title this defendant submitted to his attorney, the defendant Henry S. Monroe, to examine, and who, after examination thereof, advised this defendant that the title to said real estate, as the same appeared by said abstract, was good in said John J. Walker, and the other owners thereof, with the exception of a defect in the probate of the will of the said Arthur F. Hopkins, deceased; whereupon this defendant stated and told the said John J. Walker of the said defect and objection raised by his said attorney to the title to said real estate; to obviate and remove which, and the better to perfect the title to said premises in accordance with his said agreement, the said John J. Walker proposed to this defendant, that if this defendant would pay him, said John J. Walker, the sum of eight thousand and two hundred dollars in cash, and
237 make six notes for the deferred payments, payable to said John J. Walker, executor, and also execute deeds of trust of said real

estate to secure the said notes, and deliver the said notes to said S. H. Kerfoot & Co., to be by said S. H. Kerfoot & Co. held until the said John J. Walker should procure and deliver to this defendant a quitclaim deed to said premises from all the other owners thereof, that he, the said John J. Walker, would then and there make and deliver to this defendant a good and sufficient deed for said premises so far as it was possible for him to do, and would also procure and deliver to this defendant as soon as possible thereafter, a quitclaim deed to said premises from all the other parties interested therein, and that when he so procured and delivered such quitclaim deed he should be entitled to receive the said notes and deeds of trust; to which proposition this defendant then and there assented, and then and there in accordance therewith paid to said John J. Walker, the said sum of eight thousand two hundred dollars, and then and there delivered to the said S. H. Kerfoot & Co., as escrows aforesaid, his six several promissory notes payable to the order of John J. Walker, and amounting in the aggregate to the sum of seventeen thousand four hundred dollars, ($17,400,) three of said notes bearing
238 date the 16th day of March, in the year of our Lord one thousand eight hundred and sixty-seven, each for the sum of eighteen hundred and twelve dollars and fifty cents, due respectively on or about the 16th day of March, in the years one thousand eight hundred and sixty-eight, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, with interest at six per cent. per annum, payable at the office of S. H. Kerfoot & Co., and secured the said three notes by deed of trust bearing date the sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, by conveying to Henry S. Monroe, esquire, the land hereinbefore described, situate in section four aforesaid, and three other of said promissory notes bearing date the said sixteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, each for the sum of three thousand nine hundred and eighty-seven dollars and fifty cents, payable respectively on or before the sixteenth day of March, in the years one thousand eight hundred and sixty-eight, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, with interest at the rate of six per cent. per annum, payable at the office of said S. H. Kerfoot & Co., secured by deed of trust bearing date the sixteenth day of March, one thousand eight hundred and sixty-seven, conveying to said Henry S. Monroe, esquire, the rest of said land hereinbefore described as by the said notes and deeds of trust, now in the
239 custody of this defendant, reference being thereunto had when produced, will more fully and at large appear. In consideration whereof, this defendant then and there on the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, received of and from the said John J. Walker, a deed of said premises. And this defendant says and states the fact to be, that this defendant made the said purchase in good faith, solely and alone, of and from the said John J. Walker, as hereinbefore set forth, and not otherwise or differently, and paid for the said premises all the same were in his judgment then reasonably worth; and that neither before or at the time of the making of said agreement, or at the time of the making and delivery of the said notes and deeds of trust, and the said deed from the said John J. Walker to this defendant, or at any other time before, were the said S. H. Kerfoot & Co., or the said Samuel H. Kerfoot, or the said J. Ford Peirson, or either of them, in any manner or way whatever, directly or indirectly, interested with this defendant in the said premises or any part thereof, or in making the said purchase or in regard thereto;

and, further, that this defendant neither counselled or advised with the said S. H. Kerfoot & Co., or either of the members of said firm, in any manner or way in regard thereto.

And this defendant, further answering, says it is true that said complainant John J. Walker, as executor aforesaid, executed said deed to this defendant, and received from this defendant the sum of
240 eight thousand two hundred dollars cash, and that this defendant thereupon delivered to said S. H. Kerfoot & Co. his three certain promissory notes in writing, payable to the order of said John J. Walker, executor aforesaid, each for eighteen hundred and twelve dollars and fifty cents, due respectively on or before the sixteenth days of March, in the years of our Lord one thousand eight hundred and sixty-eight, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, with interest at six per cent. per annum, payable at the office of S. H. Kerfoot & Co., and to secure the same further by deed of trust bearing date the sixteenth day of March, one thousand eight hundred and sixty-seven, conveyed the tract of land hereinbefore and in said complainants' said amended bill of complaint described, situate in section four, to the defendant Henry S. Monroe, esquire, which deed is recorded in book 379 of deeds, page 468, in the recorder's office of Cook County, and also delivered his said three certain other promissory notes, payable as aforesaid, each for three thousand nine hundred and eighty-seven dollars and fifty cents, due respectively on or before the sixteenth days of March, in the years of our Lord one thousand eight hundred and sixty-eight, one thousand eight hundred and sixty-nine, and one thousand eight hundred and seventy, at the office of said S. H. Kerfoot & Co., with interest at six per cent.
241 per annum, and to secure the same conveyed the rest of said land by deed of trust bearing date the sixteenth day of March, one thousand eight hundred and sixty-seven, to said defendant Henry S. Monroe, which deed is recorded in the office of the recorder of deeds of the said county of Cook, in book 380, at page 372. But this defendant denies that the said deed from said John J. Walker to this defendant, or the said notes or deeds of trust were made or delivered as by the said complainants in their said bill of complaint in that respect stated and charged. On the contrary thereof, this defendant doth say and state the fact to be, that each, all, and every of the said deeds and notes were made, executed, and delivered as hereinbefore in that behalf by this defendant set forth.

And this defendant denies that he, at any time, ever caused to be prepared, or did prepare, a quitclaim deed, or any deed, to be executed by the said complainants, or any or either of them, or by the said John J. Walker, purporting to convey or conveying to this defendant their respective interests, or any interests whatever, in said real estate, or any part thereof, or directed the said S. H. Kerfoot & Co. to retain the said notes and trust deeds, or any of them, until the said complainants should execute and deliver said quitclaim deed to this defendant, as by the said complainants in their said amended bill of complaint in that respect stated and charged. On the contrary thereof, this defendant doth say and state the fact to be, that the said quitclaim deed was caused and procured to be prepared by the said complainant,
242 John J. Walker, as hereinbefore set forth, and that the said notes were placed in the hands of S. H. Kerfoot & Co. at the instance and request of said John J. Walker, as herein also set forth, and not otherwise or differently.

And this defendant, further answering, says he has no knowledge,

information, or belief, save as he is advised by said complainants in their said original and amended bill of complaint, and, therefore, can neither admit or deny whether, on the nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven, or at any other time, the said complainant paid the said S. H. Kerfoot & Co. the sum of seven hundred and fifteen dollars, or any other sum, as commissions for selling said real estate to this defendant.

And this defendant, further answering, denies that, afterwards, or at any time whatever, this defendant received of or from the said S. H Kerfoot & Co., or either of the members of said firm, or that the said S. H. Kerfoot & Co. agreed to pay or secure, or did secure, to this defendant, at the request of this defendant, any part whatever, or one-half of of the commissions, which the said John J. Walker, in his said bill of complaint, states he paid to said S. H. Kerfoot & Co. as this defendant's share thereof, by reason of said pretended confederacy or otherwise.

And this defendant, further answering, denies that this defendant, or the said S. H. Kerfoot & Co., namely, the said Samuel H. Kerfoot and J. Ford Pierson, to complete or further complete any joint pur-
243 chase, or to share or own the said real estate, or to express any understanding or agreement by them, or either of them, secretly, corruptly, or covertly made, under date of March nineteenth, one thousand eight hundred and sixty-seven, or at any other time, executed or interchangeably delivered to each other the agreement or writing particularly set forth in complainants' said amended bill of complaint. On the contrary thereof, this defendant says and states the facts to be, in regard to the making of said agreement between this defendant and said S. H. Kerfoot and J. Ford Pierson, that some considerable time subsequent to the nineteenth day of March, one thousand eight hundred and sixty-seven, after this defendant had purchased and paid for said real estate, as aforesaid, and during and before the time when the said John J. Walker delivered said quitclaim deed, executed by the said other complainants to this defendant, this defendant, in the interim between the date of said purchase and the time aforesaid, having offered the said real estate for sale, through divers persons and in divers ways, at the rate of one thousand dollars per acre, and being unable to effect a sale thereof at that price, stated to the said defendant, Samuel H. Kerfoot, that they, the said S. H. Kerfoot & Co., were instrumental in this defendant's purchasing the said real estate, and that the same was not then worth the price which this defendant had paid therefor, and that this defendant had been endeavoring to make a sale thereof
244 at the rate of one thousand dollars per acre, upon credit, and was unable to make a sale thereof at that price and upon those terms, whereupon the said defendant, Samuel H. Kerfoot, stated to this defendant that they, the said S. H. Kerfoot & Co., would purchase one-half of said premises at the rate and upon the terms that this defendant purchased the same of said John J. Walker; and this defendant then verily believing that he had paid the full and fair value of said premises to said John J. Walker, and, also, verily believing that the said premises were not then worth more than this defendant had so paid therefor, this defendant then and there stated and told the said Samuel H. Kerfoot that this defendant would sell the said firm of S. H. Kerfoot & Co. an undivided one-half interest in said real estate, at the price and on the terms which this defendant had purchased the same of said John J. Walker, provided the said S. H. Kerfoot & Co. would, in addition thereto, pay the defendant the sum of three hundred and seventy-five dollars, which was about one-half of the sum that S. H. Kerfoot & Co. ought

to have received from the said John J. Walker for assisting him in making sale of said premises, which to do the said S. H. Kerfoot then and there agreed; and thereupon the said Samuel H. Kerfoot, in his own proper handwriting, prepared the original of the said agreement in the said amended bill of complaint set out, and antedated the same to
245 March the nineteenth, one thousand eight hundred and sixty-seven, with a view to have said instrument bear the same date as that on which this defendant made said cash payment, and not, as in said complainants' said amended bill of complaint stated and charged, secretly, corruptly, or covertly, with a view to cover up or hide any misconduct on the part of the said S. H. Kerfoot & Co., or either of them, and this defendant, as by said complainants, in their said amended bill of complaint, most wrongfully and unjustly alle*d*ged.

And this defendant, further answering, says that he has no knowledge or information or belief, only as advised by the statements of said *complaints* in said original and amended bills of complaint, whether, on or about the first day of May, one thousand eight hundred and sixty-seven, the said John J. Walker requested the said other complainants to sign and execute the said quitclaim deed; but this defendant presumes from the fact that the said John J. Walker had, as hereinbefore set forth, promised and agreed to procure the execution of the said quitclaim deed, and from the further fact that they did execute such deed, that they were requested so to do by the said John J. Walker, and therefore this defendant admits that they were so requested. But this defendant denies that the said complainants were in any manner or way deceived or ignorant of their rights in the premises.

246 And this defendant denies all combination, confederacy, and secret or covert agreement between the said S. H. Kerfoot & Co. and this defendant. And, further, this defendant says that no such agreement or any agreement whatever in that regard existed between the said Samuel H. Kerfoot & Co., or either of the members of said firm, and this defendant. And this defendant submits and insists that, under the facts and circumstances hereinbefore set forth, this defendant lawfully could and might enter into said agreement and also bargain and sell as aforesaid to the said S. H. Kerfoot & Co., an undivided one-half of said real estate in manner aforesaid.

And this defendant admits that, on or about the thirtieth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, after the execution thereof as aforesaid, the said John J. Walker delivered the said quitclaim deed to this defendant, and received therefor the said notes from said S. H. Kerfoot & Co.

And this defendant, further answering, says it is true that, on or about the first day of June, A. D. 1867, this defendant bought the said notes and paid the said complainant, John J. Walker, therefor, seventeen thousand four hundred dollars, and interest secured by his said notes and trust deed to and for the use of said complainants, and that said complainants thereupon caused to be surrendered up and delivered to this defendant the said promissory notes and caused the said trust
247 deeds to be released; but this defendant denies that in so doing he perpetrated or contemplated any fraud or wrong upon the said complainants or any of them or in any manner or way deceived or intended to deceive them in the premises. And this defendant further says that he was the sole purchaser of said real estate from said John J. Walker as aforesaid; and that the price paid by this defendant for the same, at the time of the sale thereof to this defendant as aforesaid, was its full value.

And this defendant, further answering, denies that said sum of twenty five thousand six hundred dollars was a grossly inadequate price for said lands at the time of the sale thereof to this defendant, or that this defendant and the said S. H. Kerfoot & Co., or either of the members of said firm, in any manner or way concealed their knowledge thereof from said complainants or any of them. On the contrary thereof this defendant avers and states the fact to be that the said sum of twenty-five thousand six hundred dollars at the time of the sale of said lands to this defendant as aforesaid was a full and fair price therefor. And this defendant denies that he well knew, or at all knew or understood or had any knowledge or information that said S. H. Kerfoot & Co., as the agents of said complainants, had been offered better or so good a price therefor.

And this defendant, further answering, admits that the said written agreement so made and entered into between this defendant and
248 said S. H. Kerfoot & Co., in manner aforesaid, was duly recorded in the said recorder's office, in book 404, page 292, as in said amended bill alledged. But this defendant has no knowledge or information, save as advised by said original and amended bills of complaint, when the said complainants acquired an actual knowledge of the existence of said agreement or the recording thereof.

And this defendant, further answering, of his own personal knowledge as to himself, and upon information and belief as to said Samuel H. Kerfoot, denies that, at any time since the making of said agreement between said S. H. Kerfoot & Co. and this defendant, this defendant and said S. H. Kerfoot & Co., or either of them resorted to various or any pretexts, shifts, excuses, assertions, or subterfuges, to conceal or cover up the interest of said S. H. Kerfoot & Co., under the hereinbefore mentioned agreement.

And this defendant, further answering, says he has no knowledge or information, save as advised by the said amended bill of complaint, and can therefore neither admit or deny whether, in the month of February, 1868, or as soon as it was intimated to said John J. Walker that said S. H. Kerfoot & Co. had any interest with this defendant in said property, said John J. Walker wrote to said Kerfoot the letter marked Exhibit "C," annexed to said amended bill of complaint, or whether
249 said defendant Kerfoot, knowing or understanding the facts stated in the affidavit of said Pierson, marked Exhibit "B," and in the said Exhibit "A" to be true, afterwards, under date of February 29, 1868, answered the said John J. Walker's letter as set forth in Exhibit "D," annexed to said amended bill; this defendant therefore leaves the said complainants to make such proof thereof as they may deem proper.

And this defendant, further answering, says he has no knowledge or information, save as advised by the said amended bill of complaint, and therefore can neither admit or deny, whether said defendant Kerfoot was the agent of the said Arthur F. Hopkins during his lifetime, touching said property, or had charge thereof; or whether the sale of the same was made by or through the counsel, advice, and agency of said Kerfoot & Pierson, as in said amended bill of complaint stated and set forth. But this defendant denies that the same was well or at all known to this defendant as in said bill alledged.

And this defendant, further answering, says he has no knowledge or information, save as advised by said amended bill of complaint, and, therefore, cannot answer whether the said John J. Walker, relying upon the knowledge, skill, or ability, as well as in the counsel and advice of the said Kerfoot touching said property, on or about the first day of

March, one thousand eight hundred and sixty-seven, frankly informed the said Kerfoot that it had become necessary to raise, for the purpose of the said Hopkins estate, immediately, the sum of ten thousand
250 dollars in cash out of said property by predicating a loan thereon; or whether said John J. Walker, to that end, then or there solicited or requested the said S. H. Kerfoot & Co, to obtain such loan; or whether said S. H. Kerfoot & Co. represented to said John J. Walker that it would be impossible to obtain a loan on said property for that amount at that time; or whether said Walker relied upon or believed the same to be true; or whether said S. H. Kerfoot & Co., well knew or understood that said representations were false; or whether if said S. H. Kerfoot & Co. exerted themselves to obtain said loan, or had then made known to capitalists that a loan of ten thousand dollars was, or had been, desired on said property, the same could easily have been obtained in Chicago; or whether said S. H. Kerfoot & Co., with the intent to deceive the complainants and said John J. Walker in the premises, or to obtain an interest in the property as such agents, counselled or advised the said John J. Walker, in view of complainants' necessities, that the only way said ten thousand dollars could be raised from said property at that time was to sell said property; or whether it was thereupon decided to sell or dispose of said property at the highest market price; or whether said John J. Walker directed said S. H. Kerfoot & Co., before selling said property, to advertise the same for sale; or whether said John J. Walker was subsequently informed by said Kerfoot or said Pierson,
251 or believed that the same was then and there duly advertised by the said S. H. Kerfoot & Co.; or whether said complainants could or not learn that said property was so advertised; or whether, in fact, said S. H. Kerfoot & Co., did or not advertise the same for sale at all, or kept the same out of market for the purpose of acquiring an interest therein, with this defendant, or some other person, without the knowledge or consent of said complainants, well knowing or understanding that said complainants depended or relied solely or entirely upon the knowledge, skill, or ability of the said S. H. Kerfoot & Co., in the premises; or whether said Kerfoot & Co. represented to said John J. Walker, in the month of March, 1867, that that was a bad time to sell said property; but this defendant does say and states the fact to be that said representations if made by said S. H. Kerfoot & Co., or either of the members of said firm, were in fact, true; and, therefore, this defendant denies that said alleged representations were made for the purpose of inducing said complainants or any of them to sell said property at the price which this defendant proposed to pay therefor.

And this defendant, further answering, denies that the said letter of the 29th February, 1868, was written by the said Samuel H. Kerfoot for the purpose of covering up or concealing the alleged interest of said S. H. Kerfoot & Co. in the premises, or to allay the suspicions of the said Walker.

252 And this defendant, further answering, denies that the market value of all said land at the time said sale was made was at least $1,200 00 per acre, and further denies that this defendant then well knew or understood the same to be the fact. On the contrary thereof, this defendant doth say and state the fact to be that the price paid by this defendant for said land at the time of the sale thereof to him as aforesaid, was a full and fair price for the same.

And this defendant, further answering, denies that, well knowing or understanding that said S. H. Kerfoot & Co. were agents for said complainants, or that well knowing or understanding, or that being well or

sufficiently or at all advised, that said Kerfoot & Co. were agents of complainants in the premises, or had in secureing or reserving to themselves the benefit of a half interest or any interest in said property, on conditions that this defendant had through them obtained of and from complainants, this defendant refused to comply with said executory agreement in writing of date March 19th, 1867, so that said S. H. Kerfoot & Co., were compelled to cause to be prepared the said bill of complaint marked Exhibit "A."

And this defendant, further answering, denies that, by producing or exhibiting said bill of complaint or informing this defendant of their intention to file the same in court, the said S. H. Kerfoot & Co., effected a compromise with this defendant, or that this defendant yielded
253 or paid to them a large sum of money, or that this defendant further promised or agreed to yield or pay to the said S. H. Kerfoot & Co. a share of the profits derived from said land as the same should be sold or disposed, notwithstanding their deed to this defendant, in said amended bill recited, of date September 5th, 1868.

And this defendant, further answering, denies that the defendant Henry S. Monroe now has the notes or deeds executed to him as trustee.

And this defendant, further answering, admits that the defendants named in said bill of complaint, except the defendants Kerfoot and Pierson, have, and claim to have, some interest in said property, which they derived from this defendant, as set forth in Exhibit "H," and that said defendants still in part owe this defendant therefor, but this defendant denies that said defendants or any of them owe said defendants, Kerfoot and Pierson, or either of them, therefor, or any part thereof.

And this defendant, further answering, denies that, well knowing or understanding that the said transaction was fraudulent or void, as against the complainants, this defendant further or in any manner or way connived with said Samuel H. Kerfoot, and J. Ford Pierson, or either of them, or that, to that end, for the sum of five thousand dollars, or any other valuable consideration, to cheat or defraud said complainants, or any of them, in the premises, on the fifth day of September, one thousand eight hundred and sixty-eight, or any other day or time, the said
254 Samuel H. Kerfoot and J. Ford Pierson, by the deed of quitclaim, of that date, ostensibly conveyed or transferred their interest in said premises to this defendant, and, further, this defendant also denies that the said Kerfoot and Pierson, or either of them, are in any manner or way, directly or indirectly, interested in said lands, or any part thereof, or in the proceeds thereof. On the contrary thereof, this defendant doth say and state the fact to be that, on or about the fifth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, the said Samuel H. Kerfoot and J. Ford Pierson, by quitclaim deed of that date, transferred and conveyed to this defendant all their interest in said real estate, under said agreement of March nineteenth, A. D. 1867, for the consideration hereafter set forth, as they well and lawfully might, which deed is recorded in the recorder's office of Cook County, in book 472, page 393.

And this defendant, further answering, denies that, of the said real estate purchased of said complainants, this defendant is now in possession, or the owner of, the east half of block one, the west half of block five, or lots one or two, aforesaid. But this defendant admits that he is in possession, and the owner of lots twenty-three and twenty-four, in block twelve, in Prior and Hopkins' subdivision aforesaid, but not of any other part or portion thereof; and this defendant further says he has no knowledge or information and does not know, except as

255 advised by said complainants' said original and amended bills of complaints, whether said complainants are informed or believe that this defendant is about to dispose of or convert the said premises into cash, claiming it as his own property; but this defendant doth say, however, and state the fact to be that, having honestly and fairly purchased and paid for the said premises, as hereinbefore set forth, he does claim and believe himself to be the owner thereof, so far as not already disposed of.

And this defendant, further answering, denies that of said lands this defendant, on or about the ninth day of September, one thousand eight hundred and sixty-eight, by deed of that date, sold or conveyed to one Alonzo Rawson, the said tract situate in section four, the east half of block six, and the east half of block five, for the sum of eighty-six thousand dollars, as by the said complainants in their said amended bill in that respect alleged. On the contrary thereof this defendant saith and states the fact to be that, on the said day and year, this defendant did sell to said Rawson the whole of block six, the east half of block five, and the said tract in section four, for the sum of eighty-six thousand dollars; but this defendant further says that, the west half of block six aforesaid, was not contained in, or any part of, the purchase by this defendant made from said John J. Walker, and that said west half of said block six at the time of said sale, was greatly more valuable
256 than the east half of said block six.

And this defendant, further answering, denies that, on or about the first day of August, A. D. 1868, this defendant by deed of that date, sold or conveyed of said real estate, block four to Samuel Wing, and received therefor, thirty thousand dollars; but this defendant doth say and state the fact to be, that he sold the said land to said Wing for the price or sum of twenty-eight thousand dollars, and that the deed therefor, *for* this defendant to said Wing, expressed as consideration thirty thousand dollars, instead of twenty-eight thousand dollars the real consideration, and that the expenses attending said sale paid by this defendant, amounted to about one thousand dollars, leaving the real amount received by this defendant twenty-seven thousand dollars.

And this defendant, further answering, admits that he holds securities and proceeds of said sales, and submits and insists that the same are his own property, and also insists that the said securities and proceeds are not the property of said complainants, or any or either of them, or any other person or persons except this defendant. And this defendant denies that, in truth or in fact, he holds said securities or property, or any part or portion thereof in trust for said complainants, or any or either of them, and submits that he should not be compelled to account therefor to said complainants, or any or either of them, or to any other person or persons whomsoever, or to yield or deliver up the same
257 or any part thereof to said complainants, or any or either of them, or to any other person or persons, for the reason herein set forth, that he purchased and paid for said real estate with his own lawful money, and sold and disposed thereof honestly, openly, and fairly, and not secretly or covertly, as by the said complainants stated and charged.

And this defendant, further answering, admits that, on or about the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty-eight, this defendant executed a mortgage on the west half block five, aforesaid, to one Joseph B. Shephard to secure the sum of ten thousand dollars, but this defendant says and states the fact to be that he did not make or execute said mortgage to secure any indebtedness of this defendant to said Joseph B. Shephard. On the

contrary thereof, this defendant doth say and state the fact to be that, being invested with the legal title to the said real estate as mortgagee, this defendant, at the instance and request of one Henry H. Honore, who is and was the real and equitable owner of the premises, to secure two notes of five thousand dollars each, made by said Henry H. Honore to said Shephard, in part consideration for the purchase price of said premises, made and executed the said mortgage to said Shephard, who having previously thereto sold the said premises to the said Honore at
258 the instance and request of the said Honore, made the deed therefor to this defendant, to secure this defendant in the sum of eleven thousand dollars, which this defendant had before that time lent and advanced to said Honore. And this defendant denies that he threatens or ever did threaten in any manner or way to encumber the balance of said lands, or any part thereof, or to transfer or dispose of said lands or any part thereof, or the securities or moneys received therefor, to prevent the said complainants or any or either of them from obtaining adequate relief in the premises.

And this defendant, further answering, denies that, from the first day of July, 1868, all the while, said property so owned by the complainants, was worth the just and full sum of three hundred thousand dollars.

And this defendant, answering further, saith that John J. Walker and Maria Walker were, on the first day of March, one thousand eight hundred and sixty-seven, the owners of the said real estate, each of the quarter thereof, and that John J. Walker, executor, and the other complainants, were, on that day the owners of the undivided two-fourths thereof.

And this defendant, answering further, saith that he is informed and believes and therefore admits that complainants employed the defendants, Kerfoot and Pierson, acting as the firm of S. H. Kerfoot & Co., as their agents, to sell said real estate, but this defendant does not know,
259 save as advised by said complainants' bill of complaint, and therefore cannot answer, whether the account stated, or the alleged receipt of said S. H. Kerfoot & Co. are truly or correctly set forth, or whether they were made or delivered by said firm to said John J. Walker, executor, or whether said executor did or not pay the said firm of S. H. Kerfoot & Co. the sum of eight hundred and thirty-six dollars and twenty-five cents for expenses and services for selling said property, or whether the sum of seven hundred and fifteen dollars was or not paid said firm as specified in said account stated.

And this defendant, answering further, saith that said Kerfoot & Co. did not, nor did any or either of the members of said firm agree to divide or share any commissions or money received of said complainants or any of them with this defendant, and that no commissions were, or have been divided by the said firm, or either of the members thereof with this defendant.

This defendant, answering further, saith that an agreement in writing was made between this defendant and said Kerfoot & Co., of the form, tenor, and effect hereinbefore set forth. And this defendant, answering further, saith that he does not know, and therefore cannot answer, whether or not it is a fact that said J. Ford Pierson made affidavit in the manner, form, tenor, or effect as set forth in Exhibit "B." And this defendant, answering further, saith it is not true that said Kerfoot &
260 Co. did perform everything to be done and performed according to the terms and effect of said agreement, or that this defendant utterly refused or neglected to perform his part of said agreement.

And this defendant, answering further, saith that he does not know, and therefore cannot answer, whether either of defendants, Samuel H. Kerfoot or J. Ford Pierson, or said firm of S. H. Kerfoot & Co. caused a bill of complaint to be prepared as set forth in Exhibit "A."

And this defendant, answering further, saith that he does not know, and therefore cannot answer, whether or not it is true that such bill of complaint, if prepared, was of the form, substance, tenor, or effect as set forth in Exhibit "A," or whether said Exhibit "A" is or not substantially a copy of such bill of complaint, if any, which defendants Kerfoot and Pierson caused to be prepared.

This defendant, answering further, saith it is not true that the original agreement was reduced to writing by this defendant instead of the defendant Kerfoot. On the contrary thereof, this defendant, answering, saith that the original of said agreement was prepared by said Kerfoot, and then and there amended in the handwriting of this defendant as this defendant now remembers. This defendant is unable to produce the original of said agreement. And further this defendant answering, saith he believes that the words "I and me" refer to this defendant, and the word "Pierson" refers to the defendant J. F. Pierson.

And this defendant, answering further, saith he does not know, and therefore cannot answer whether the original agreement was assigned to defendant Pierson by defendant Kerfoot as stated in Exhibit "A," or whether both were recorded, or whether the exemplification thereof on file with said complainants' bill is a true or correct copy of said agreement or the assignment indorsed thereon.

261 And this defendant, further answering, saith it is true that the quitclaim deed from the complainants to this defendant, of date March sixteenth, one thousand eight hundred and sixty-seven, was delivered on or about the thirtieth day of May, one thousand eight hundred and sixty-seven.

This defendant, answering further, saith it is a fact that, when said quitclaim deed was delivered to this defendant, the said agreement between Kerfoot & Co. and this defendant, bearing date March nineteenth, one thousand eight hundred and sixty-seven, was subsisting in writing.

And this defendant, answering further, saith it is a fact that the balance of the purchase money was not paid by this defendant to said Walker until on or about the first day of June, A. D. 1867; and that the notes given for the deferred payments, which were not taken up until after the delivery of said quitclaim deed, was the sum of seventeen thousand four hundred dollars, with interest from March sixteenth, A. D. 1867, ten thousand dollars in cash, and the balance in property, to wit: Block three, in Derby and Wallace's subdivision of that part south of Barry Point Road, of the northwest quarter of the northwest quarter of section thirteen, township thirty-nine, range thirteen.

This defendant, answering further, says it is a fact that but eight thousand two hundred dollars of the purchase money was paid on the nineteenth day of March, A. D. 1867. And this defendant, answering further, saith he does not know, and therefore cannot answer, whether said Walker wrote the letter, as stated in Exhibit "C," to said Kerfoot. And this defendant, answering further, saith he does not know, and therefore cannot answer, whether said Kerfoot wrote to said complainant Walker the several letters, as stated in Exhibits "E," "F," "G," "D."

And this defendant, answering further, says he does not know, and therefore cannot answer, whether, at the time of writing the letter, as

set forth in Exhibit "D," the facts stated in Exhibit "B" were well or at all known to said Kerfoot.

262 This defendant, answering further, saith he does not know, and therefore cannot answer, whether there was steps taken by said Kerfoot & Co., after February twenty-ninth, A. D. 1868, to enforce said agreement between this defendant and Kerfoot and Pierson, in chancery or otherwise.

This defendant, answering further, saith that, in consideration for the quitclaim deed, dated fifth day of September, A. D. 1868, this defendant did pay said Kerfoot and Pierson the sum of seven thousand dollars, and, at their request, conveyed to Joseph B. Shephard the west half of block five, aforesaid.

And the defendant, answering further, saith that, on the fifth day of September, A. D. 1868, the actual cash value of all the real estate purchased of complainants by this defendant, as hereinbefore set forth, was not the sum of three hundred thousand dollars or upwards, but the same was then worth in cash value about one hundred and ten thousand dollars.

And this defendant, answering further, saith that of the property so purchased he has made sale thereof, in manner and form and to the extent hereinbefore set forth.

And this defendant, answering further, saith that he does not know, and therefore cannot answer, what interest in said premises the said defendants, or any of them, now have. But this defendant, answering, saith that, on the fifth day of September, A. D. 1868, Alonzo Rawson purchased of this defendant the premises, hereinbefore in that respect set forth and described, at the price of eighty-six thousand dollars, and paid this defendant, on the entire purchase, twenty thousand dol-

263 lars cash, and secured the balance by deeds of trust on the property purchased, and has since paid thereon about the sum of twenty-nine thousand dollars; and, on or about the first day of August, A. D. 1868, Samuel Wing purchased of this defendant block four, hereinbefore set forth and described, at the price of twenty-eight thousand dollars, and then paid one-half cash, and secured the balance by deed of trust on property, which balance he subsequently paid, and out of this purchase price defendant paid about one thousand dollars for commissions; and, on or about the twelfth day of September, A. D. 1868, Messrs. Philpot and Picket, and Winchester Hall, purchased of this defendant the whole of block one, hereinbefore set forth and described, for seventy thousand dollars, to be paid in five years, with interest, at eight per cent. per annum; and, on or about the fifth day of September, A. D. 1868, this defendant conveyed to Joseph B. Shephard, at the request of said S. H. Kerfoot & Co., the west half of block five, which this defendant gave to said S. H. Kerfoot & Co., in part consideration for the quitclaim deed of that date; and afterwards Henry H. Honore purchased the said west half of block five, and had it conveyed to this defendant to secure to this defendant a loan of eleven thousand dollars, and this defendant, at the request of said Honore, made a mortgage on said west half of block five to secure two notes of five thousand dollars each, made by said Honore to said Shephard. All the securities, so far as the

264 same are unpaid, are owned by this defendant. Lots one and two, in block twelve, this defendant sold to Mrs. Eliza Derby, wife of James W. Derby, for fifteen hundred dollars cash, on condition that she would improve the same, which she has done; and this defendant owns lots twenty-three and twenty-four, in block twelve, and has made valuable improvements thereon.

And this defendant, answering further, saith it is not true that the legal title to, and possession of, the said east half of block one, the west half of block five, and lots one, two, twenty-three and twenty-four are in this defendant.

And this defendant, answering further, saith that the title and possession thereof are as set forth in the answer of this defendant to the twenty-third interrogatory.

And this defendant, answering further, saith that he has sold of the said property the several portions hereinbefore, in his answer to the said twenty-third interrogatory, described, as therein set forth.

And this defendant, answering further, saith he has not in any manner or way encumbered any part or portion of the property which he purchased of said complainants, only as hereinbefore set forth.

And this defendant, answering further, saith that said Kerfoot and Pierson directly received the said sum of seven thousand dollars from this defendant, and that this defendant at their request conveyed said west half of block five to Joseph B. Shephard in full consideration
265 for the said quitclaim deed. That, as hereinbefore set forth, this defendant on or about the 1st day of August, 1868, agreed to convey to Samuel Wing, by good and sufficient warrantry deed, block 4, aforesaid, and to Alonzo Rawson, block 6, and the east half of block five, and the land in section 4, by like deed of warranty; after the making of which said agreement, said Wing and Rawson informed this defendant that they would not accept the title or pay for the said property until this defendant procured a quitclaim deed from said Kerfoot and Pierson. Wherefore this defendant, to comply with said agreements and perfect title to said Wing and Rawson, found it necessary to procure such quitclaim deed, and, therefore, did submit to the exorbitant demands of said Kerfoot and Pierson.

And this defendant, answering further, saith it is not true, so far as this defendant has any knowledge or information, that said Kerfoot and Pierson, or either of them, have or hath, directly or indirectly, received from said purchasers or encumbrancers, or either of them, any part or portion of said property, securities, or money for the same or from the same; and that no part or portion thereof is now secured to be paid to said Kerfoot and Pierson, or either of them, or held either in trust or otherwise for them or either of them, or for the firm of S. H. Kerfoot & Co., either directly or indirectly, so far as this claimant knows or is advised.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged.
266 Without this, that there is any other matter or thing in the said complainants' said amended bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of the said defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct. And, having now fully answered, prays to be thence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained.

WM. M. DERBY.

JOHN J. MCKINNON, *Solicitor.*
CORYDON BECKWITH &
MONROE MCKINNON,
Of Counsel for Defendant.

267 United States of America, northern district of Illinois, ss.

STATE OF ILLINOIS,
County of Cook, ss:

William M. Derby, having been duly sworn, says he is a defendant whose name is subscribed to the foregoing answer; that he has heard the said answer read and knows the contents thereof; that the said answer is true of his own knowledge, except as to the matters and things therein stated and set forth on information and belief, and as to those matters and things he believes it to be true. And further saith not.

WM. M. DERBY.

Subscribed & sworn to before me, this 4th day of Nov'r, 1869.
[SEAL.] TERTIUS W. WADSWORTH,
Notary Public.

(Endorsed:) Filed Nov. 4, 1869. Wm. H. Bradley, cl'k.

268 On this day, to wit, the 4th day of December, A. D. 1869, came said complainants by their solicitors, and filed in said clerk's office their replication in said cause; which said replication is in the words and figures following, to wit:

Replication.

In the circuit court of the United States for the northern district of Illinois.—In chancery.

JOHN J. WALKER, JOHN J. WALKER, EX'R, et als.
vs.
WILLIAM M. DERBY.

The replication of the above-named complainants in the amended bill named to the answer of William M. Derby to said amended bill of complainants aforesaid.

The complainants, saving and reserving to themselves all and all manner of advantage of exception to the manifest insufficiency of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the answer of the said defendant is
269 uncertain, untrue, and insufficient to be replied unto by these complainants without this, that any other matter or thing whatsoever in the said answer contained material in the law to be replied unto, confessed and avoided, traversed or denied is true; all which matters and things these complainants are & will be ready to aver and prove as this hon. court shall direct; & humbly pray as in & by their said bill & amended bills respectively they have always prayed.

HILL & DALE,
Compl'ts' Sol'rs.

A. L. COLLINS, *of Counsel.*

(Endorsed:) Filed Dec. 4, 1869. Wm. H. Bradley, cl'k.

On this day, to wit, the 24th day of January, A. D. 1870, in the

record of the proceedings of said court in said entitled cause appears the following entry, to wit:

JOHN J. WALKER, JOHN J. WALKER, EXECUTOR, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia
270 C. Lowe, Augusta H. Rice, William L. Hopkins, Stark H. Oliver, Kate E. Oliver, and Juliet A. Hopkins } Chancery.
vs.
WILLIAM M. DERBY ET AL.

Now comes the defendant by his attorney, who moves the court to set this cause down for hearing; and it appearing to the court that the complainants had had notice of this application, and no objection being made, it is ordered by the court that the same be set down for hearing upon the amended bills, answer, replication, exhibits, and proofs on file herein.

On this day, to wit, the 3d day of March, A. D. 1870, in the record of the proceedings of said court in said entitled cause, appears the following entry, to wit:

JOHN J. WALKER ET AL.
vs. } Chancery.
WILLIAM M. DERBY ET AL.

On motion of the complainants by their solicitor, the order heretofore entered herein setting this cause down for hearing is set aside
271 and vacated by the court, and the time extended twenty days in which to take proof.

On this day to wit the 5th day of July, A. D. 1870, came said complainants by their solicitors and filed in said clerk's office two certain exemplifications from the records of Cook County, Illinois, in said entitled cause; which said exemplifications are in the words and figures following, to wit:

Copy letters of att'y from Hopkins to Rees & Kerfoot.

[Book 92 of deeds, page 463.]

Know all men by these presents, that we, Arthur F. Hopkins, of Mobile, Alabama, and James W. Pryor, of New York, are joint owners of the north seventy (70) acres of the west half of the northwest quarter of section number three, (3,) of township number thirty-eight (38) north, of range fourteen (14) east of 3rd P. M. That we hereby make, constitute, and appoint James H. Rees, and Samuel H. Kerfoot, of Chicago, Cook County, and State of Illinois, them or either of them, our true and lawful attorney or attorneys, for us and in our names, and stead to cause the said tract of land to be surveyed, subdivided, platted, and
272 staked in such manner and after such plan as to our said attorney or either of them may seem fit and proper, for us, and in our names, to acknowledge and place on the records of Cook County aforesaid a map of said subdivision; to make sales of parcels of land in said subdivision in such quantities, at such prices, and on such terms as may seem fit and *and* proper to our said attorneys, or either of them;

to give in our names to purchasers of such parcels, bonds or contracts for deeds of said parcels, containing such stipulations, covenants, or conditions relating to said sales as may to our said attorneys or either of them seem fit and proper, hereby ratifying and confirming all the acts of our said attorneys, or either of them, done under and by virtue of these presents.

Witness our hands and seals this second day of June, A. D. 1855.

A. F. HOPKINS. [SEAL.]
J. W. PRYOR. [SEAL.]

STATE OF ILLINOIS,
County of Cook, ss:

273 I, D. C. Beattie, justice of the peace in and for said county, do hereby certify that A. F. Hopkins, and J. W. Pryor, who are personally known to me as the real persons whose names are subscribed to the annexed power of attorney, appeared before me this day and acknowledged that they executed the said instrument of writing as their own free act and deed, for the uses and purposes therein expressed.

Given under my hand this 2nd June, 1855.

D. C. BEATTIE, *J. P.*

No. 60,786. Filed for record June 30th, 1855.

STATE OF ILLINOIS,
County of Cook:

I, Norman T. Gassette, clerk of the circuit court, and ex-offic'o recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument
274 filed in my office on the 30 day of June, A. D. 1855, and recorded in book No. 92 of deeds, on page 463.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 2d day of July, A. D. 1870.

[SEAL.] NORMAN T. GASETTE,
Clerk of the Circuit Court, and Ex-officio Recorder of Cook County.

[5-cent rev. stamp, cancelled.]

(Endorsed:) Filed July 5, 1870. Wm. H. Bradley, cl'k.

Revocation of letters of att'y.

[Book 205 of deeds, page 462.]

Whereas James W. Pryor of the city of New York, and Arthur Hopkins of the city of Mobile, in the State of Alabama, did on the 2nd of June, 1855, make their power of attorney, which is recorded in book 93, page 463, of deeds in Cook County, in the State of Illinois, to James H. Rees, and Samuel H. Kerfoot, of the city of Chicago, Illinois,
275 authorizing them to lay out lands therein described, belonging to said Pryor and Hopkins, and sell and convey them; and whereas, they have sold no part of the same, and the said Pryor having revoked the said power on his part: Now know all

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In wit
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record of the proceedings of said court in said entitled cause appears the following entry, to wit:

JOHN J. WALKER, JOHN J. WALKER, EXECUTOR, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia
270 C. Lowe, Augusta H. Rice, William L. Hopkins, Stark H. Oliver, Kate E. Oliver, and Juliet A. Hopkins } Chancery.
vs.
WILLIAM M. DERBY ET AL.

Now comes the defendant by his attorney, who moves the court to set this cause down for hearing; and it appearing to the court that the complainants had had notice of this application, and no objection being made, it is ordered by the court that the same be set down for hearing upon the amended bills, answer, replication, exhibits, and proofs on file herein.

On this day, to wit, the 3d day of March, A. D. 1870, in the record of the proceedings of said court in said entitled cause, appears the following entry, to wit:

JOHN J. WALKER ET AL.
vs. } Chancery.
WILLIAM M. DERBY ET AL.

On motion of the complainants by their solicitor, the order heretofore entered herein setting this cause down for hearing is set aside
271 and vacated by the court, and the time extended twenty days in which to take proof.

On this day to wit the 5th day of July, A. D. 1870, came said complainants by their solicitors and filed in said clerk's office two certain exemplifications from the records of Cook County, Illinois, in said entitled cause; which said exemplifications are in the words and figures following, to wit:

Copy letters of att'y from Hopkins to Rees & Kerfoot.

[Book 92 of deeds, page 463.]

Know all men by these presents, that we, Arthur F. Hopkins, of Mobile, Alabama, and James W. Pryor, of New York, are joint owners of the north seventy (70) acres of the west half of the northwest quarter of section number three, (3,) of township number thirty-eight (38) north, of range fourteen (14) east of 3rd P. M. That we hereby make, constitute, and appoint James H. Rees, and Samuel H. Kerfoot, of Chicago, Cook County, and State of Illinois, them or either of them, our true and lawful attorney or attorneys, for us and in our names, and stead to cause the said tract of land to be surveyed, subdivided, platted, and
272 staked in such manner and after such plan as to our said attorney or either of them may seem fit and proper, for us, and in our names, to acknowledge and place on the records of Cook County aforesaid a map of said subdivision; to make sales of parcels of land in said subdivision in such quantities, at such prices, and on such terms as may seem fit and *and* proper to our said attorneys, or either of them;

to give in our names to purchasers of such parcels, bonds or contracts for deeds of said parcels, containing such stipulations, covenants, or conditions relating to said sales as may to our said attorneys or either of them seem fit and proper, hereby ratifying and confirming all the acts of our said attorneys, or either of them, done under and by virtue of these presents.

Witness our hands and seals this second day of June, A. D. 1855.

A. F. HOPKINS. [SEAL.]
J. W. PRYOR. [SEAL.]

STATE OF ILLINOIS,
County of Cook, ss:

273 I, D. C. Beattie, justice of the peace in and for said county, do hereby certify that A. F. Hopkins, and J. W. Pryor, who are personally known to me as the real persons whose names are subscribed to the annexed power of attorney, appeared before me this day and acknowledged that they executed the said instrument of writing as their own free act and deed, for the uses and purposes therein expressed.

Given under my hand this 2nd June, 1855.

D. C. BEATTIE, *J. P.*

No. 60,786. Filed for record June 30th, 1855.

STATE OF ILLINOIS,
County of Cook:

I, Norman T. Gassette, clerk of the circuit court, and ex-offic'o recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument
274 filed in my office on the 30 day of June, A. D. 1855, and recorded in book No. 92 of deeds, on page 463.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 2d day of July, A. D. 1870.

[SEAL.] NORMAN T. GASETTE,
Clerk of the Circuit Court, and Ex-officio Recorder of Cook County.

[5-cent rev. stamp, cancelled.]

(Endorsed:) Filed July 5, 1870. Wm. H. Bradley, cl'k.

Revocation of letters of att'y.

Revocation

[Book 205 of deeds, page 462.]

Whereas James W. Pryor of the city of New York, and Arthur F. Hopkins of the city of Mobile, in the State of Alabama, did on the 2nd of June, 1855, make their power of attorney, which is recorded in book 93, page 463, of deeds in Cook County, in the State of Illinois, to James H. Rees, and Samuel H. Kerfoot, of the city of Chicago, Illinois,
275 authorizing them to lay out lands therein described, belonging to said Pryor and Hopkins, and sell and convey them; and whereas, they have sold no part of the same, and the said Pryor having revoked the said power on his part: Now know all men by these presents, that I, the said Arthur F. Hopkins, do hereby revoke the said power, and all powers to sell and convey the same or any part thereof.

In witness whereof, I have hereunto set my hand & affixed my seal this 4th day of December, 1860.

ARTHUR F. HOPKINS. [SEAL.]

Not agent after 1860

record of the proceedings of said court in said entitled cause appears the following entry, to wit:

JOHN J. WALKER, JOHN J. WALKER, EXECUTOR, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia
270 C. Lowe, Augusta H. Rice, William L. Hopkins, Stark H. Oliver, Kate E. Oliver, and Juliet A. Hopkins } Chancery.
vs.
WILLIAM M. DERBY ET AL.

Now comes the defendant by his attorney, who moves the court to set this cause down for hearing; and it appearing to the court that the complainants had had notice of this application, and no objection being made, it is ordered by the court that the same be set down for hearing upon the amended bills, answer, replication, exhibits, and proofs on file herein.

On this day, to wit, the 3d day of March, A. D. 1870, in the record of the proceedings of said court in said entitled cause, appears the following entry, to wit:

JOHN J. WALKER ET AL. } Chancery.
vs.
WILLIAM M. DERBY ET AL. }

On motion of the complainants by their solicitor, the order heretofore entered herein setting this cause down for hearing is set aside
271 and vacated by the court, and the time extended twenty days in which to take proof.

On this day to wit the 5th day of July, A. D. 1870, came said complainants by their solicitors and filed in said clerk's office two certain exemplifications from the records of Cook County, Illinois, in said entitled cause; which said exemplifications are in the words and figures following, to wit:

Copy letters of att'y from Hopkins to Rees & Kerfoot.

[Book 92 of deeds, page 463.]

Know all men by these presents, that we, Arthur F. Hopkins, of Mobile, Alabama, and James W. Pryor, of New York, are joint owners of the north seventy (70) acres of the west half of the northwest quarter of section number three, (3,) of township number thirty-eight (38) north, of range fourteen (14) east of 3rd P. M. That we hereby make, constitute, and appoint James H. Rees, and Samuel H. Kerfoot, of Chicago, Cook County, and State of Illinois, them or either of them, our true and lawful attorney or attorneys, for us and in our names, and stead to cause the said tract of land to be surveyed, subdivided, platted, and
272 staked in such manner and after such plan as to our said attorney or either of them may seem fit and proper, for us, and in our names, to acknowledge and place on the records of Cook County aforesaid a map of said subdivision; to make sales of parcels of land in said subdivision in such quantities, at such prices, and on such terms as may seem fit and *and* proper to our said attorneys, or either of them;

to give in our names to purchasers of such parcels, bonds or contracts for deeds of said parcels, containing such stipulations, covenants, or conditions relating to said sales as may to our said attorneys or either of them seem fit and proper, hereby ratifying and confirming all the acts of our said attorneys, or either of them, done under and by virtue of these presents.

Witness our hands and seals this second day of June, A. D. 1855.

A. F. HOPKINS. [SEAL.]
J. W. PRYOR. [SEAL.]

STATE OF ILLINOIS,
County of Cook, ss:

273 I, D. C. Beattie, justice of the peace in and for said county, do hereby certify that A. F. Hopkins, and J. W. Pryor, who are personally known to me as the real persons whose names are subscribed to the annexed power of attorney, appeared before me this day and acknowledged that they executed the said instrument of writing as their own free act and deed, for the uses and purposes therein expressed.

Given under my hand this 2nd June, 1855.

D. C. BEATTIE, *J. P.*

No. 60,786. Filed for record June 30th, 1855.

STATE OF ILLINOIS,
County of Cook:

I, Norman T. Gassette, clerk of the circuit court, and ex-offic'o recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument
274 filed in my office on the 30 day of June, A. D. 1855, and recorded in book No. 92 of deeds, on page 463.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 2d day of July, A. D. 1870.

[SEAL.] NORMAN T. GASETTE,
Clerk of the Circuit Court, and Ex-officio Recorder of Cook County.

[5-cent rev. stamp, cancelled.]

(Endorsed:) Filed July 5, 1870. Wm. H. Bradley, cl'k.

Revocation of letters of att'y.

[Book 205 of deeds, page 462.]

Revocation

Whereas James W. Pryor of the city of New York, and Arthur F. Hopkins of the city of Mobile, in the State of Alabama, did on the 2nd of June, 1855, make their power of attorney, which is recorded in book 93, page 463, of deeds in Cook County, in the State of Illinois, to James H. Rees, and Samuel H. Kerfoot, of the city of Chicago, Illinois,
275 authorizing them to lay out lands therein described, belonging to said Pryor and Hopkins, and sell and convey them; and whereas, they have sold no part of the same, and the said Pryor having revoked the said power on his part: Now know all men by these presents, that I, the said Arthur F. Hopkins, do hereby revoke the said power, and all powers to sell and convey the same or any part thereof.

In witness whereof, I have hereunto set my hand & affixed my seal this 4th day of December, 1860.

ARTHUR F. HOPKINS. [SEAL.]

Not agent after 1860

STATE OF VIRGINIA,
City of Richmond, sct.:

This day personally appeared before the undersigned, James Pleasants, a notary public in and for the city of Richmond, in the State of Virginia, Arthur F. Hopkins, who is personally known to me to be the person whose name is subscribed to the foregoing deed of revocation, as having executed the same, and acknowledged that he had executed the same for the uses and purposes therein expressed.

276

Witness my hand and seal of office at Richmond aforesaid, this eighteenth day of January, in the year of our Lord one thousand eight hundred and sixty-one.

[L. S.] JAMES PLEASANTS,
Notary Public.

No. 41,638. Filed 23rd Jan'y, 1861.

STATE OF ILLINOIS,
County of Cook, ss:

I, Norman T. Gassette, clerk of the circuit court, and ex-officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of the record of a certain instrument filed in my office on the 23d day of Jan'y, A. D. 1861, and recorded in book No. 205 of deeds, on page 462.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court at Chicago, this 2nd day of July, A. D. 1870.

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[SEAL.] NORMAN T. GASSETTE,
Clerk of the Circuit Court, and Ex-officio Recorder of Cook County.

[U. S. rev. stamp, 5-cts., cancelled.]

(Endorsed:) Filed July 5, 1870. Wm. H. Bradley, cl'k.

On this day, to wit, the 6th day of July, A. D. 1870, in the record of the proceedings of said court in said entitled cause, appears the following entry, to wit:

Cause set for hearing.

JOHN J. WALKER ET AL.
vs.
WILLIAM M. DERBY ET AL. } Chancery.

Now come the parties, by their solicitors, and thereupon this cause is set down for hearing upon the original and amended bills of complaint, answers, replications, exhibits, and proofs on file herein, and, after hearing a part of the arguments of counsel, the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

278

On this day, to wit, the 7th day of July, A. D. 1870, came said complainants, by their solicitors, and filed in said clerk's office, in said entitled cause, the following copies of letters, to wit:

Correspondence between Walker & Kerfoot & Co.

Copy.] MOBILE, *June* 15th, 1866.

Messrs. S. H. KERFOOT & Co.,
Dearborn Street, Chicago, Ill.

GENTLEMEN: I wrote to you on the 14th of May, and, receiving no

answer, I conclude that letter miscarried. I therefore enclose a copy of it, and request that, on receipt of this, (which I send by express,) you will be good enough to give me the information desired.

Yours, respectfully,
(Signed) JOHN J. WALKER.

(Endorsed:) Copy of letter from J. J. Walker to S. H. Kerfoot
279 & Co., Mobile, June 15th, '66.

Copy.] MOBILE, *May* 14th, 1866.

Messrs S. H. KERFOOT & Co.,
Dearborn Street, Chicago, Ill.

GENT: Wm. G. Jones, esq., of this city, and myself have recently qualified as executors under the will of Judge A. F. Hopkins, deceased.

Will you be good enough to give us your opinion as to the present and prospective value of the property of the estate under your charge, and to send us, also, a map of the lots, with a bill for the expense of preparing it, and your ⅛ for taxes paid, &c.?

Judge Hopkins died here in November last, but was pardoned by the President before his death.

Yours, respectfully,
(Signed) JOHN J. WALKER.

(Endorsed:) Copy of letter from J. J. Walker to S. H. Kerfoot & Co., Mobile May 14th, '66.

The letter of which the below is a copy was written to me at my request.

J. J. WALKER.

Mar. 18, 1868.

280 S. H. KERFOOT. J. F. PIERSON.

OFFICE OF S. H. KERFOOT & CO.,
REAL ESTATE AND LOAN BROKERS,
Chicago, M'ch 19, 1867.

To JNO. J. WALKER, Esqr., *Executor, &c.*,
Sherman House, Chicago.

D'R SIR: I do not deem it at all necessary, but as I proffered this note to you I send it to you. I deem the sale made by you to Wm. M. Derby of the land of the estate of the late Judge A. F. Hopkins, a very fair one, & one the best that probably could have been made, especially in bulk—making the whole at once of avail to the estate in cash, and secured notes at interest.

To have retailed the property would have made it yield more, but this w'd have involved several elements wh'h might have worked well & might have operated disadvantageously. For instance, parts of the land are bad slough, which, separated from the high and desir-
281 able portions would have remained on your hands or have sold for a very low figure. Again, the saleable portions would have gone to numerous & various purchasers, the money have come into your hands in driblets, and have been distributed over a length of time, perhaps accomplishing y'r ends, and perhaps not.

If sale, as you know, was made on the basis of the whole area, including streets, railroads, &c., how much land net was sold, my letter of Aug. 31, '66, will show you.

I do not suppose y'r action in behalf of y'r cestui qui trusts needs any

the complainants now reside, and how long they have resided there, respectively. Do you know the defendant? If yea, state where and when, and under what circumstances you became acquainted with him; who, if anybody, introduced you to the defendant, and for what purpose. Do you or not know Samuel H. Kerfoot and J. Ford Pierson? If yea, state where, when, and under what circumstances you became acquainted with them, or either of them.

Answer to the first interrogatory. My name is John J. Walker. I am fifty-four years of age. I reside in the city and county of Mobile, in the State of Alabama, and I am a commission merchant. I know, and am related by marriage to, all of the complainants, being the husband of the eldest daughter of my testator, A. F. Hopkins, deceased. I am the husband of Maria Walker, and the others are the children and sons in-law of A. F. Hopkins, except Juliet A. Hopkins, who is the widow of the deceased. Mrs. Juliet A. Hopkins, the widow of the testator, resides in New York, having moved there some three years since. All the other complainants reside in Mobile, having been there since 1846, and some of them prior to that time. I am acquainted with the defendant. I was introduced to him in the city of Chicago, Illinois, by S. H. Kerfoot, of the firm of S. H. Kerfoot & Co., which firm I had employed to sell some property near the city of Chicago, and the defendant
288 was introduced to me by said Kerfoot, as the person most likely to buy the property. This was about the first of March, 1867. I am acquainted with Samuel H. Kerfoot and J. Ford Pierson. I saw S. H. Kerfoot for the first time in August, 1865, when I visited Chicago as the agent of A. F. Hopkins, then living, to look after his interests there. I made the acquaintance of J. Ford Pierson about the 1st of March, 1867, who introduced himself to me as Kerfoot's partner when I called at their office, in Chicago.

Second interrogatory. Are you not the executor of the last will and testament of Arthur F. Hopkins, deceased? If yea, please state who the said Arthur F. Hopkins was, where he lived, when and where he died; who were his legatees, and where they respectively reside. What interest, if any, had the testator in land or real estate in or near the city of Chicago, and State of Illinois? State, if you know, when, and under what circumstances the said Arthur F. Hopkins acquired such lands at Chicago. Did you or any of the rest of the complainants have any interest, either legal or equitable, in said property, as a joint purchaser or owner of the same, with the said decedent? If yea, state the interest of each respectively, as fully as you can. Who were decedent's agents at Chicago to look after and care for said property, during his life-time?

Answer to second interrogatory. I am the sole executor of the last will and testament of Arthur F. Hopkins, deceased. Arthur F. Hopkins was a citizen of the State of Alabama. He lived in Mobile, and died there about the 8th of November, 1865. His legatees or devisees were the female complainants in the bill; his son, W. L. Hopkins, and myself as trustee for two grand-children, and their residence is as stated in my answer to the first interrogatory. The testator, A. F. Hopkins, was the owner of about 31 or 32 acres of land in Cook County, Illinois, in or near the city of Chicago. The said Arthur F. Hopkins acquired said lands by purchase, either jointly with or from J. W. Pryor, of New York, about the year 1852 or 1854. My wife and myself subsequently became part owners of the interest of the testator in said lands. We held our title first under the instruments described by the testator in his last will and testament—which instruments were subsequently super-

ceded by a declaration of trust, made and executed by the testator in July, 1865, setting forth that my wife and myself were the owners of one-fourth each of all the lands held by him, in or near the city of Chicago, a copy of which declaration of trust is herewith submitted, marked "Exhibit A." S. H. Kerfoot was the agent of A. F. Hopkins to pay taxes and look after his interests in and near Chicago during his life-time.

Third interrogatory. Were you or not at Chicago some time in February or March, A. D. 1867? If yea, for what purpose did you then visit Chicago? When did you first and last see the said real estate; who went with you; and state if you, of your own personal knowledge,
289 had any means of judging of the value, and of making sale of said property; and if you were not compelled to employ resident agents to sell the said property? And if you shall say that you employed S. H. Kerfoot & Co., state fully why you employed them, and whether or not you relied upon them in selling said property. State fully and chronologically all your dealings with and by and through Kerfoot & Co. with the defendant, stating as near as you can, the various interviews between yourself and them, or either of them, relative to the sale and transfer of said real estate, and whether or not a sale of said estate was made, and to whom? State the amount of commissions agreed to be paid, and the amount paid. Give the language of Kerfoot and Pierson, or either of them, and of Derby, and of yourself, at the several interviews and negotiations, in dialogue, as near as you can remember, and state succinctly all you said and did, and all that was said and done by yourself and defendant, and by Kerfoot and Pierson in the matter, until you received your whole pay for said lands.

Answer to the third interrogatory. I was at Chicago sometime in February or March, 1867. I went to Chicago for the purpose of selling the land aforesaid. I first saw the land at that time, in company with Mr. Kerfoot, who drove me down to show it to me. That was the only time I saw or examined the land before the sale of it. I subsequently saw a portion of it when in the neighborhood, in company with Mr. Derby, either in May, 1867, or in March, 1868, I don't remember which; I had no personal knowledge of the value of property in or near Chicago, or of the usual mode or manner of selling it, and was, therefore, compelled to employ resident agents to sell said property, and did employ S. H. Kerfoot & Co. for that purpose. As the remainder of this interrogatory calls for a succinct history of the negotiations which terminated in the sale of this property, I shall give the full particulars, as well as I now recollect them:

The property of the estate of A. F. Hopkins, when I qualified as his executor, consisted chiefly of real estate in Mobile, and the unimproved land in Cook County, Illinois, just outside the limits of the city of Chicago. In the winter of 1867 it became necessary to raise a considerable amount of money to pay certain debts against the estate, which could be no longer postponed. The only way to raise the money was by a sale of property. The improved property in Mobile was yielding good rents, and the parties interested, and friends of the family whom I consulted, all agreed that, as executor, it was my duty to sell the unimproved land near Chicago, rather than the real estate in Mobile. Accordingly, in the latter part of February, 1867, I went to Chicago for that express purpose. On arriving there I called to see Mr. Kerfoot, at his office, and was informed by his partner, Pierson, that Kerfoot was absent from the city, but would be back in two or three days. I told Mr. Pierson the purpose of my visit, and asked him about the chances

of selling the property. He asked me if I had fixed a price for it. I told him I had not, as I was not competent to do so, being a total stranger to the place, and having no knowledge of the value of the property, beyond what Mr. Kerfoot had informed me in his previous correspondence on the subject, (see Kerfoot's letter of August 31st, 1866, stating that the property was worth one thousand, and, perhaps, twelve hundred dollars per acre, which letter is in the hands of my solicitors, Hill & Dale, who are authorized to produce it to the court.) I said further to Pierson that I should await Kerfoot's return, and requested
290 him, in the meantime, to advertise the property for sale, so that it might be known that it was on the market. This he promised to do, and subsequently informed me, in reply to my inquiry, that it was advertised. He did not, however, either then or afterwards, show me the advertisement, nor did I ask to see it, taking it for granted, of course, that it was advertised as he had reported it. When I went to Chicago I did not know a soul in the city except Kerfoot, whom I had seen on a previous visit there in the summer of 1865, and with whom I had corresponded, with reference to the property, after the death of my testator, which occurred in November, 1865. Kerfoot had been the agent of A. F. Hopkins to look after the property since he first acquired it. I was aware that A. F. Hopkins in his life-time reposed full confidence in his ability and integrity; and I knew, moreover, that he was then, and always had been, the agent also of J. W. Pryor, of New York, the intimate friend of A. F. Hopkins, and who was originally joint owner with said Hopkins of the tract of land known as the "Pryor & Hopkins division." When I left Mobile in February, 1867, I took with me a note of introduction to Mr. Gage, the proprietor of the Sherman House in Chicago. While waiting Kerfoot's return I told Mr. Gage, in general terms, that I had come there to sell some property, and asked him if Mr. Kerfoot was competent to do that sort of business. He replied that he had but a slight personal knowledge of Kerfoot, but that, so far as he knew, he was considered a very respectable and competent real-estate broker. When, therefore, Kerfoot returned to the city, I felt myself justified in entrusting the business entirely to his management. I started with a good opinion of him, which was further confirmed and increased by our further intercourse; so much so, that, before the negotiations resulting in the sale of the property were completed, my feelings towards him had ripened into sentiments of warm personal regard and friendship. There was on his part, a manner, conversation, and treatment, full demonstration that he intended me to believe, as I did, that my feelings of friendship for him were cordially reciprocated. These were my reasons for employing his firm as my agents to sell the property. In our first interview on the subject, I explained to him frankly the situation of the estate I represented and its necessities. He said it was necessary to fix a price for the property, and asked me if I had fixed a price for which I would sell. I told him I had not, but that I had hoped and expected to get at least $1,200 to $1,500 an acre, as he had written to me in August, 1866, that it was then worth $1,000, and, perhaps, $1,200 per acre. He replied that it was not possible—the time was not propitious for selling outside property. It was dull—not in demand, and there had been no movement in it since August, 1866. On this representation, we both agreed that we could, in all likelihood, do better by waiting, if that were practicable. I then told him that I was compelled to have at least $10,000 in money, but that if I could borrow that amount on the property, I could then postpone selling to a later period. He answered promptly that there was no chance to raise money

on vacant property, as the times were very tight, and no negotiations of that kind were then practicable. This left me no choice but to sell. It was then agreed, if not at our first interview, certainly at a very early stage of the proceedings, that the property should be sold for $1,000 per acre, that being, in his opinion, the maximum price at which it could be sold; and he said that he knew but one man in the city whom he thought would likely buy the property. He supposed he might sell it to him, because he knew that he wanted south-side property; and that he had, or would soon have, a large amount of money arising from a recent sale of his residence in the city. That man, he told me,
291 was the defendant W. M. Derby, to whom I was soon introduced by him; and then commenced the negotiations which finally terminated in the sale of the property. I cannot now recall all the details of the interviews which took place between Kerfoot & Co., Derby, and myself. I have no recollection, however, that Kerfoot told me of any offer that he had received from any other party, or of his mentioning to me the name of a Mr. Andrews in connection with it. If he did, it was done so as to produce no impression; for the effect of his talk and conversations about the property was, that I looked to Derby alone as the only possible purchaser. I soon found Derby to l
Kerfoot had described him to me, a shrewd and exacting
but having the fullest confidence in Kerfoot, and trusting
to his skill and judgment, I did not fear being overreached by
About the 6th of March, 1867, a memorandum agreement was sig
Derby and myself, by which Derby agreed to buy the prope
$25,600, payable $8,200 in cash and the balance in one, two, and
years, with interest at 6 per cent., on delivery of a deed conveying to him a clear title to the premises; which agreement was left in the hands of Kerfoot & Co. until an abstract of title could be made out and a conveyance perfected. When the abstract of title was finished, it was submitted to Mr. Monroe, the counsel of Derby, who pronounced the chain of title perfect, with the exception of one or two unimportant links from some previous grantors, which Kerfoot said he could easily remedy, as he was familiar with the facts, and the parties who could furnish the absent links (merely formal papers) were then in the city. This he, Kerfoot, did do to the satisfaction of Mr. Monroe, but by that time Derby professed to be dissatisfied with the purchase and insisted that I should leave out the undivided half of the ten-acre parcel, urging various objections, and showing, as I thought, a disposition to back out of the trade. This alarmed me, because I thought I was making a good sale, and I believed what Kerfoot told me, that Derby was the only chance to sell the property. I told Kerfoot my fears of Derby's intentions. He said he would go and see him, and shortly afterwards came back and said he had told him distinctly he should take all the property or none. After that Derby finally raised the objection as to my identity, which was communicated to me, I think, by Mr. Monroe at his office. I went immediately and told Kerfoot of this objection, whereupon he seemed to be very indignant, and said he would go at once to Derby's office to see him about it. He returned in a few minutes, saying that he had spoken very sharply to Derby about raising such an objection, and had told him that unless he withdrew it, he would break up the whole trade, and he should not have the property at all. Shortly afterwards Mr. Monroe came to Kerfoot's office, and said that he had laughed Derby out of his objection to my indentity, but that Derby now required that, in addition to my deed as executor, I should furnish him a deed from myself and wife, and the other legatees under the will. I am not posi-

tive whether this new condition was first proposed by Mr. Monroe, or by Derby himself, but at all events, I was told by one or both of them, that all objections should be withdrawn if I would agree to furnish the supplemental deed. I said at once that I would do so, and that the deed might be prepared in any form they might desire. It was thereupon agreed that I should execute my deed as executor; that Derby should pay me the cash payment, $8,200 on the delivery of that deed, and that his notes for the balance $17,400, at one, two, and three years, with interest at 6 per cent., together with his trust deed or mortgage, should be deposited in the hands of S. H. Kerfoot & Co., to be given up to me when I delivered the supplemental deed aforesaid. My impres-
292 sion is that the supplemental deed was prepared by Mr. Monroe, but I am not positive as to that. The form of it was, however, approved and pronounced satisfactory to Derby. All the papers in accordance with this agreement, were then drawn up and executed. My deed, as executor, was dated, I think, on the 16th, and delivered on the 19th of March, 1867. I received from Derby the cash payment, $8,200. His notes and mortgage, or trust deed, were deposited with Kerfoot & Co. The supplemental deed was handed to me. I paid Kerfoot & Co. their *com*-commissions, $715, for selling the property, and left Chicago for Mobile on the 20th of March. The receipt of Kerfoot & Co. for $836, the full amount I paid them for all their services and expenses attending the sale is herewith submitted, marked "Exhibit B." This amount includes the commissions, $715, for the sale made to Derby, as appears in the detailed statement or account current rendered by Kerfoot & Co. on the 19th March, 1867, which statement I deposited in the hands of my solicitors, Messrs Hill & Dale, who will produce it in court. Some time elapsed before I could procure the execution of the supplemental deed, as I had to send it to France, where some of the legatees then were. I received it back in the latter part of May, 1867, and immediately took it with me to Chicago. On arriving there I presented the deed to Kerfoot, but I do not remember whether he or I shewed it to Derby and Mr. Monroe, but it was examined and accepted as properly executed. I did not take the notes and mortgage or trust deeds immediately out of the hands of Kerfoot & Co., because Derby had told me when I left in March, that he thought when I came back with the supplemental deed that he would be able to cash all his notes. So I left the papers in the hands of Kerfoot & Co., and commenced negotiations with Derby for cashing the notes, The result of this negotiation was, that he paid me $10,000 in cash, and for the balance I took from him a piece of vacant property on the west side of the city. I paid for this property an exorbitant price, for Kerfoot and others advised me, and Derby himself admitted, that what I allowed for it was much more than it was then worth. But I wanted the $10,000 in money badly, and I took the property on the opinion expressed by Kerfoot, Derby, and others that by the time Derby's last notes became due in March, 1870, the property would, in all probability, be worth fully and perhaps more than the price Derby then demanded of me for it. So the trade was made. Derby received his notes and the supplemental deed. I received the $10,000 in money and the deed for the west-side property, and thus finally perfected and closed the sale of the estate property to Derby. This was done about the 1st of June, 1867. I do not remember whether his notes were delivered to him by Kerfoot or myself, nor whether the trust deeds were handed to him or left in the hands of Kerfoot & Co. I have not those deeds. I should state as a fact in the history of the transaction that, pending the negotiations, I told both Kerfoot and Derby of the extent of the

interest of my wife and myself in the property, and I consulted Kerfoot as to the propriety or necessity for recording in Chicago the declaration of trust which I held from my testator. He said it was not at all necessary, as the will was on record there, that the supplemental deed would convey the title of my wife and my myself, and recording the declaration of trust was not essential to any interest. I also further state as a fact that, from the beginning to the end of the negotiations for the sale of the property, I relied unreservedly on Kerfoot's judgment, and often told him during our interviews (and on one occasion, I remember distinctly, when Derby was present) that, being a stranger, and wholly ignorant of property values in Chicago, I trused entirely to his management, and that I should require him, being my agent, to give me,
293 before I left, his written opinion as a real-estate broker that the sale was the best that could be made, and that I had got the full market value of the property. He unhesitatingly promised to do so, and, being reminded of this promise on the morning of the 19th of March, 1867, he gave or sent to me at my hotel, late in the afternoon of that day, a letter of that date, which I left in the hands of my solicitors, Hill & Dale, who will produce it in court. I remember that the letter was disappointing to me at the time, because the expression of his opinion was not near so strong and unequivocal as he had led me to believe it would be. I did not see him after the receipt of the letter, but I was in no humor to find fault or criticise it, because I was then highly pleased with the result, and the state of satisfaction in which I left was induced by the influence exerted over my feelings and opinions by Mr. Kerfoot's apparently zealous care and protection of my interests. When I went to Chicago, I expected to meet there Mr. J. W. Pryor, of New York, who was thinking of selling, about that time, a portion of his property; but I found a letter there from him, addressed to Kerfoot's care, stating that he could not meet me as he had promised, owing to bad health. I do not remember now whether I reported the sale to him myself, or whether he heard it from Kerfoot, but, not long after I returned home, I received a letter from him, in which he expressed the greatest surprise at the sale I had made, giving as a reason for it, that he had, not long before that time, been offered $1,500 an acre for all of his land, which, originally, was a part of the same tract as that I had sold. This letter made me feel very uncomfortable, but excited no suspicion in my mind against Kerfoot, for my confidence in him was so great that I felt persuaded that he could explain satisfactorily the apparent discrepancy in the price offered Pryor and that I received from Derby. Accordingly, I wrote to him immediately exactly what Pryor said about the sale in his letter to me. I have lost or mislaid Pryor's letter to me, or perhaps I may have sent it to Kerfoot; nor did I retain a copy of my letter to Kerfoot. His answer to it is dated the 11th April, 1867, and is in the hands of my solicitors, Hill & Dale, who will produce it to the court. That answer did satisfy me, because he there states that Pryor, after testing the market fully, had agreed with him that my sale to Derby was a good one. This feeling of satisfaction was further increased and confirmed when I went back to Chicago in the latter part of May, 1867, for while there both Kerfoot and Derby, whom I saw every day, took particular pains to tell me of the sale which Pryor had made in April, and that, in their opinion, my sale was fully as good, if not a better one than his. This information was highly gratifying to me, and I came away better satisfied than ever with the sale I had made.

Fourth interrogatory. State whether, at the time of said sale, you knew that Kerfoot & Co. were to have any interest in said property

with defendant, or in any way. State how you learned, and when, that Kerfoot & Co. were to be, or had become, interested in said property, and what, if anything, you said or did relative thereto. Please annex any and all letters received by you from Samuel H. Kerfoot, or Kerfoot & Co, relative to the said property or sale, which may be material to the subject-matter of this your examination, or state why you cannot annex the same, and annex copies thereof, if you can, or state why you cannot; and state all you can remember about the matters of such letters of materiality thereto. Add to this deposition copies of your letters to Kerfoot & Co. which may be material to the said matter.

294 Answer to fourth interrogatory. At the time of said sale I had not the remotest idea that Kerfoot & Co. were to have any interest in the property with the defendant, or in any way. No hint or intimation of it was given to me, either by Kerfoot or Derby then, nor when I went back in May, 1867, though on that visit I saw them both every day; discussed with Kerfoot how much Derby would probably make on the sale, and congratulated Derby on the prospect he had of making a fortune out of the property. In February, 1868, I was informed by a citizen of Chicago that a contract between Kerfoot & Co. and Derby, had been placed on record there, showing that Kerfoot and Co. were joint purchasers with Derby of the property I had sold, and moreover, that it could be proved that Kerfoot & Co. had, before the sale to Derby, been offered by another party $200 more per acre for the land than Derby had paid me. Notwithstanding the startling character of this information, I could not believe that Kerfoot had designedly put a fraud on me. At all events I thought it was due to the relation of friendship that was existing between us, that he should have an opportunity for explanation of the facts reported to me. Accordingly I wrote him the letter dated February 24th, 1868, a copy of which I herewith submit, marked "Exhibit C." Not receiving a reply to this letter in due time, I became uneasy and determined to go to Chicago to investigate the matter personally. Kerfoot's answer to this letter, (which is in the hands of my solicitors, Hill & Dale, and can be produced by them to the court,) is dated the 29th of February, 1868, but did not reach Mobile until about the 17th of March, during my absence. The envelope of this letter was post-marked the 14th of March, which I think was the day, or the day previous to my arrival at Chicago. His explanation of that was that he had dated it the day he commenced writing it, but that the great length of it and his engagements, had prevented its completion before the 14th of March, the day it was mailed. All the letters received by me from S. H. Kerfoot, and Kerfoot & Co., material to the subject-matter of my examination, are in the hands of my solicitors and will be produced in court by them.

Fifth interrogatory. If you say you came to Chicago to see whether Kerfoot & Co. had acquired an interest in said property or purchase of defendant, state when you came, and what was said by you to Kerfoot & Co., and to defendant, about the matter. State word for word what Kerfoot said and did, and word for word what you said, and what, if anything, defendant said relative to the agreement between Kerfoot & Co. and defendant, dated March 19th, 1867. State when Kerfoot & Co. ceased to be your agents here, if they are not now your agents.

Answer to fifth interrogatory. I went to Chicago for that purpose, and arrived there about the 14th of March, 1868. When I presented myself at Kerfoot's office he appeared, I thought, a little flustered, and much surprised to see me, and asked immediately what had brought

me to Chicago? I told him it was because I had received no
295 reply to the letter I had written him on the 24th of February, and that I was there then to hear his explanation. He said his answer to my letter had been forwarded a day or two previously, and must have passed me on the way. His manner then became very cordial, and he gave me a verbal explanation, to the effect that some time after I had left, in March, 1867, Derby came to him one day and complained that he had made him buy property which was mostly "a damned slough;" whereupon he told Derby that if he was dissatisfied with the purchase, they (Kerfoot and Co.) would take half of it on the same terms. Derby answered they should have it if they would give him half the commissions I had paid them for selling the property; that he (Kerfoot) at once accepted the proposition, and instantly drew up the agreement, which, he said, Derby could not then refuse to sign, so promptly had the whole thing been done. Kerfoot then showed me the copy of the letter he had written to me, which I read over in his office, but hastily and not in the slightest spirit of criticism, for I was already morally convinced by what he had said, that he had not really perpetrated the fraud on me. The truth is, that in the presence of Mr. Kerfoot, who on my arrival in Chicago as a total stranger, had received me with marked cordiality, entertained me at his house, professing, as a southern man, perfect community of sentiment, and thereby winning my fullest sympathy and confidence, I could not with the feelings I then had for him, help believing implicitly whatever he told me. I afterwards saw Derby and talked to him about it. I do not remember that he said anything as to the time the agreement was made with Kerfoot & Co., but seeing that I knew of the existence of the agreement, he spoke of it very contemptuously saying that he had no idea of fulfilling it, as they had never complied with any of its terms. Before leaving, I saw Kerfoot again, and told him that Derby repudiated the agreement, and scouted the idea of his ever getting any portion of the property. Kerfoot replied—"Well, we shall see about that." Thus ended that visit, and I returned home, morally convinced, at least, that I had not been defrauded in the sale of the property. Kerfoot & Co. continued to act as my agents for the west-side property taken from Derby, and have so acted up to the filing of the bill, though since that time I have requested another party to look after my interests there.

Sixth interrogatory. State fully, and to the best of your knowledge, remembrance, and belief, any other matter, fact, and thing, material to the subject-matter of this, your examination, or which may be of benefit or advantage to the complainants or defendant herein.

Answer to sixth interrogatory. There is one other fact which I have omitted that may or may not be material: In the interview with Kerfoot at his office, in March, 1868, after seeing that I was satisfied with his explanation about the contract with Derby, he called my attention to the fact, that in his letter to me of the 19th March, endorsing the sale of the property, he used the expression that it (the letter) was "proffered" by him. This, he said, was a mistake, as the letter had been given at my request, and not on his voluntary offer, and asked me if I did not so recollect it? I replied that I did so recollect it distinctly, because I had often told him, pending the negotiations, that I should want him to give me a letter vindicating the sale, for the satisfaction of those whose interests I represented as executor. He then asked me to
296 be good enough to write on the margin of the copy of his letter in his letter-book, that it was furnished at my request, which I did, without hesitation, as I had not asked or expected him to say in the

letter that it was proffered by him. I do not remember anything more material to the issue in this suit, further than to state when and what circumstances induced me to change my opinion of the transaction, and satisfied me that there was fraud in the sale of the property. In February, 1869, I received information from Chicago, that further developments made there, showed that there had been a fraudulent combination between Kerfoot & Co. and Derby, in the sale of the property. As soon as I could leave home, which was some time in March last, I went to Chicago, and there received information which convinced me that Kerfoot had misrepresented to me the facts as to the contract between Derby and his firm. I required further evidence, and went on to New York to see Mr. Pryor, from whom I learned that Kerfoot's report, in his letter to me of April 11th, 1867, about his (Pryor's) opinion of the sale, was a pure fabrication; that so far from agreeing with Kerfoot that it was a good sale, that Kerfoot's efforts to persuade him that it was a good sale, had literally destroyed his confidence in him. These revelations amazed and shocked me greatly, but left no room for doubt. I was driven to the painful conclusion that I had been defrauded by a secret combination between Kerfoot & Co. and Derby, and on my return to Chicago I immediately ordered proceedings to be instituted. After I became fully convinced of the fraud, but a few days elapsed before the bill was filed.

JOHN J. WALKER.

(N. B. For Exhibit "A," to this deposition, see page 103 ante, being copy of declaration of trust set out in amended bill.

For Exhibit "B," to this deposition, see copy of account stated set out ante, page 105.

For Exhibit "C," to this deposition, see copy of letter Exhibit "C," pages 123, 124 ante.)

297 *Dep. of S. H. Kerfoot.*

The deposition of S. H. Kerfoot, on behalf of the complainants, taken before S. W. Burnham, esqr., commissioner, on the 23rd day of March, A. D. 1870, by agreement:

Q. What is your name?

A. S. H. Kerfoot.

Q. You are one of the defendants in this suit?

A. Yes, sir.

Q. Please state under what circumstances this memorandum was made, in the following words, which are now in pencil on this letter of March 19, 1867, from you to Mr. Walker. "The letter of which the below is a copy, was written to me at my request." J. J. Walker, March 18, 1868. Please state the circumstances under which that memorandum was made in your letter-book, as briefly as possible?

298 A. That letter opening with the words, "I do not deem it at all necessary, but as I *proferred* this note to you, I send it to you," was written (notwithstanding it states it was proffered to Mr. Walker) to Mr. Walker at his special request, and Mr. Walker stood at my side while I wrote it to him. To bring out this fact that it was written at his request, and not at my suggestion, I had Mr. Walker, when he was here a year after the letter was written, make such a memorandum on the letter.

Q. On the copy of the letter?

A. Yes, sir; on the copy of the letter.

By Mr. McKinnon:

Q. In your letter-book?

A. In my letter-book.

(NOTE.—The letter-book is marked "Letter of Kerfoot & Co., No. 1 New Series. Page 624.")

Q. Have you the original agreement of date, March 19, 1867, between S. H. Kerfoot, J. Ford Pierson, and William M. Derby?

299 A. No, sir.

Q. Do you know where it is?

A. No, sir; we delivered it to Mr. Derby, or Mr. Munroe, as Mr. Derby's attorney, at the time of our settlement with him.

Q. When did you make that settlement?

A. September "6" or "7," I think—the date of the deeds.

By Mr. McKinnon:

What year, Mr. Kerfoot?

A. 1868, I think.

Q. Mr. Kerfoot, have you the original of the agreement between John J. Walker, executor, and William M. Derby, set forth in your answer of date March 6th, 1867?

A. Yes, sir; I now produce it.

Q. Will you please allow that to be attached to your deposition?

A. No; I will furnish you a copy which you can examine & identify as a correct copy.

Q. I prefer the original. In whose handwriting is that?

A. My handwriting, sir.

300 Q. The original of that agreement is in your own handwriting?

A. Yes, sir; I have so stated.

By Mr. McKinnon:

Except signatures?

A. Yes, sir; of course.

Q. Can you state exactly when that agreement was made?

A. What do you mean; the day?

Q. Yes, sir.

A. It was made the 6th day of March.

By Mr. McKinnon:

The year, Mr Kerfoot.

A. 1867, at the suggestion and request of Mr. Walker.

Q. You have a letter from Mr. Walker, dated Mobile, April 4th, 1867; will you please read it to the reporter, and let him read it back to you.

Mr. Kerfoot read—

"MOBILE, *April 4th*, 1867.

"S. H. KERFOOT, Esq.,

"*Chicago, Ill.*

"DEAR SIR: I have a letter from Mr. Pryor, expressing great

301 surprise at the sale made to Derby. It would seem that about the time that sale was made, he was refusing $1,500 an acre for his land from other parties. I have, of course, no knowledge of the value of the property, and trusted entirely to your judgment. Must there not be some mistake about the offer for his property? Could you have been

so greatly mistaken as to the market value of property in Chicago? I deem it due to you to let you know what Mr. Pryor writes on the subject.

"Yours truly,

"JOHN J. WALKER.

"SAMUEL H. KERFOOT."

302 "For value received, John J. Walker, of Mobile, Alabama, as executor of the estate of Arthur F. Hopkins, deceased, hereby agrees to sell to William M. Derby, of Chicago, who, for value received, hereby agrees to buy of said Walker, as such executor, the property of said estate, lying in section three (3) and four, (4), of township thirty-eight (38) north, of range fourteen east of 3′ p. m., being the east half of blocks one (1) and six, (6,) and the whole of blocks four (4) and five, (5,) and lots one, (1,) two, (2,) twenty-three, (23,) and twenty-four (24) of block twelve, (12,) all in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section three,(3,) of said township and range; and also an undivided half of twenty acres, owned jointly by said estate, and one Akerly, lying in the northeast corner of said section four, (4,)
303 township and range aforesaid. The price of said property being ($25,600) twenty-five thousand six hundred dollars, payable, eight thousand two hundred dollars on delivery of a good and sufficient deed conveying said premises to said Derby, free and clear of all encumbrances, and the balance in three (3) equal annual payments, with interest thereon at six (6) per cent. per annum from date hereof; the notes for said deferred payments to be secured by mortgage of said Derby, with power of sale therein contained, duly executed and covering the premises now sold; all the papers dated even with this.

"Witness the hands and seals of the said parties hereto, this sixth (6) day of March, A. D. 1867.

"JOHN J. WALKER, [SEAL.]
"*Executor, &c.*
"W'M. M. DERBY. [SEAL.]

"In presence of—

[5-cent revenue stamp.]

"We admit that this is a correct copy of the agreement referred to in this deposition.

"MUNROE & McKINNON,
"*Att'ys, &c., for Def'ts.*"

304 *Dep. of J. F. Pierson.*

The deposition of J. Ford Pierson, on behalf of the complainants, taken before S. W. Burnham, esq'r., commissioner, on the 23rd day of March, A. D. 1870, by agreement.

Q. What is your name?
A. J. Ford Pierson.
Q. Have you the original affidavit exhibited as "B" to the amended bill in this case. Is Exhibit "B" a true copy of that affidavit?
A. Well, I can't say without reading it over, sir.
(The witness reads over the document in question.)
Q. The Exhibit "B" to the amended bill is a correct copy, with the exception that the word "executed" should be "execute?"
A. I should think so. Yes, sir.

Q. Please state whether the fact set forth in that affidavit are true, and were at the time the affidavit was made?

A. Yes, sir.

Q. A full tender of the notes & trust deeds and the considera-
305 tion of agreement of date March 19th, 1867, was made as stated in that affidavit to Mr. Derby?

A. Of what?

Q. A tender of the trust deed and the notes, as set forth in that affidavit, was made to Mr. Derby on that day—on the 31st day of August?

A. Yes, sir.

Q. By yourself in person?

A. No, not by myself, by Mr. Kerfoot; I was present.

Q. Was Mr. Kerfoot here at the time, in the city?

A. The 19th of August?

Q. When you made that affidavit?

A. No, sir.

Q. You was present when the tender was made to Mr. Derby?

A. I made the tender.

Q. You made the tender yourself in person?

A. Yes, sir.

Cross examination by Mr. McKinnon:

Q. When did Mr. Kerfoot, the defendant, go to Europe?
306 A. I think about the 19th day of August.

Q. What year?

A. 1867.

Q. When did he return?

A. In the last of November or the 1st of December.

Q. What year?

A. The same year—1867.

Q. Is that the only time he has been to Europe?

A. Yes, sir.

J. FORD PIERSON.

307 *Dep. of G. R. Clarke.*

The deposition of George R. Clark, on behalf of the complainants taken before S. W. Burnham, esq., commissioner, on the 23rd day of March, A. D. 1870, by agreement.

Q. Please give your name, age, residence, and occupation?

A. George R. Clarke; age, 43; residence, Kenwood or Hyde Park; occupation, real-estate broker, Chicago, Illinois.

Q. How long have you been engaged in that occupation?

A. 20—17 years.

Q. Are you familiar with south-side property, and how long have been familiar with south-side property in Chicago?

A. Since I have been in the business.

Q. Do you know of a subdivision known as the Prior & Hopkins subdivision of the W. ½ of the N. W. ¼ of section 3, town 38, range 14 east.

A. I do.

308 Q. How long have you been familiar with property in that subdivision.

A. Well, ever since the subdivision was made and before—10 or 15 years at any rate.

Q. You have been familiar with the values of property all that time in that vicinity?

A. Yes, sir.

Q. In March, 1867, what was the value of the E. ½ of block 1, the E. ½ of block 6, block 4, block 5, and of the undivided half of the 20 acres west of State st., as shown on the map, being Exhibit D, in the amended bill to this suit?

(Objected to unless the property be the same as that in question in this suit.)

A. Take the whole of them together, I should say $1,000 an acre; I offered that for it myself.

Q. To whom did you make that offer?

A. To S. H. Kerfoot.

Q. Why did you make that offer to Mr. Kerfoot?

309 A. Who for?

Q. Why did you make that offer to Mr. Kerfoot? Why did you apply to Mr. Kerfoot for it?

A. Because he represented that he was agent for a part of it, the Prior interest, and I believe he said he was in correspondence with Mr. Hopkins.

Q. When did you make that offer?

A. I think it was in the winter of 1866 & 1867, some time in the winter, I don't remember exactly.

Q. And were you in the city of Chicago, in March, 1867?

A. Yes, sir.

Q. Did you know of any part or portion of that property in Prior and Hopkins subdivision being for sale?

A. Yes, sir; I knew of Mr. Prior's interest being for sale.

Q. Did you know of the other interests being for sale?

310 A. No, I didn't; but I was trying to buy it. I didn't know whether it was for sale or not. Oh, yes; part of it I had offered to me by some one, I remember—that part west of State st.

Q. Who made you that offer?

A. Well, I can't remember now, a real-estate man who came into my office, and said he had 10 acres on the west side of State st., pointing out the south part of this same land, and I asked him what he asked for it, he said $800 an acre, and Charles H. Walker, with whom he was negotiating a purchase down in that part of the town, thought it was too high, and wouldn't give it; besides we didn't want west of State st., we wanted to take that east, but were willing to take it all, if we could take it altogether.

Q. Can you fix the time when you made this application to Mr. Kerfoot for this property?

A. I won't be certain whether it was in December, 1866, or whether it

311 was in May, 1866. I said I tried to buy it two times, but I don't remember the time that I applied to Mr. Kerfoot.

By Mr. McKinnon:

Do you mean May, 1867, or May, 1866?

A. May, 1866. Once I tried in the spring or summer of 1866, and the fall—I think it was the fall—I applied to Mr. Kerfoot, after his return from Europe.

Q. How long after he returned from Europe did you make that application?

A. Pretty soon after he got back—as soon as I heard he was in town.

Q. What did Mr. Kerfoot say when you made the application to Mr. Kerfoot?

A. He said he was the agent of Mr. Pryor; had been for several years, and had paid taxes on the whole of it, and a gentleman by the name of Hopkins, living in Mobile, owned part of it. I think he said Hopkins; or had owned it; that he would write and see what he could get it for, and I told him he had better submit my offer at once,
312 and he said he thought it wasn't advisable to submit the offer; that Mr. Pryor was a very nervous man, and if you offered him $1,000 he would want $1,500, and if you offered $1,500 he would want $2,000, and said the best way was to find out his lowest price, and then if it came within my idea, I might close the sale better.

Q. Did Mr. Kerfoot inform you or give you an opportunity to buy that property in March, 1867?

A. No, sir.

Q. Did you know that the property was for sale in March, 1867, at any time?

A. I did.

Q. You did know it was for sale?

A. I did, because Mr. Pryor himself told me.

Q. But you didn't know the Hopkins property was for sale in March, 1867, and never heard of it?

A. No, sir.

Q. Do you know what time the improvements by the Rock
313 Island R. R. Co. were projected in that vicinity?

A. Yes, sir; along about that time they were talking about making them.

Q. When—in the summer of ———?

A. 1866.

Q. Summer of 1866?

A. Yes, sir.

Q. What effect had those improvements, if any, upon the land of Pryor and Hopkins' subdivision, and south-side property generally?

A. At first they benefitted it, but now they are a damage. It may seem a paradox to you lawyers, but nevertheless, it is true.

Q. How many times did you apply to Mr. Kerfoot for the purchase of land in this subdivision?

A. I can't say; I was in his office several times to see about it; I don't think I ever had a conversation with Mr. Kerfoot more than once or twice, I think, on the subject.

314 Cross-examination waived.

I am positive my interviews with Mr. Kerfoot took place before he went to Europe—between May and December, 1866.

GEO. R. CLARKE.

315 *Dep. of Martin Andrews.*

Be it remembered that, on application of John J. Walker, John J. Walker, executor, Maria Walker, W'm Barnewall, Mary M. Barnewall, Henry A. Lowe, and Juliet A. Hopkins et al., the complainants in a suit now pending in the circuit court of the United States for circuit and northern district of Illinois, wherein John J. Walker et als. are complainants, and W'm M. Derby, Sam'l H. Kerfoot et als. are defendants: I, S. W. Burnham, United States commissioner in and for the northern district of Illinois, have this 24th & 26th days of January, A. D. 1870, at 147 La Salle st., in the city of Chicago, and State aforesaid, by agreement of the respective parties, proceeded to examine

Martin Andrews, as witness on behalf of the complainants in the aforesaid suit.

And I do further certify that Edward J. Hill, of counsel for complainants, and Mess. Monroe & McKinnon, of counsel for defendants.

And the said Martin Andrews being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says:

316 J. J. WALKER ET AL.
v.
W'M M. DERBY ET AL.

Deposition of Martin Andrews, January 24th, 1870.

1 q. What is your name, age, residence and occupation?

A. My name is Martin Andrews; forty-one years old. I don't know how to answer the occupation any better than to say that it is taking care of my property. I have no—what other men would call legitimate—business; taking care of property I own, and making investments for myself.

2 q. How long have you resided in Chicago?

A. I resided here in—I always get puzzled.

3 q. No matter about how long?

317 A. It is about three or four or five years; 1865 I came here; four years last fall I came here, and have resided here ever since.

4 q. Do you know one of the complainants, John J. Walker, in this suit?

A. Well, I can't say that I know him. I have seen him.

5 q. Do you know the rest of the complainants, Mrs. Walker?

A. No; I don't know any of them. I never saw any of them.

6 q. Do you know the defendant W'm M. Derby?

A. Yes, sir.

7 q. Samuel H. Kerfoot?

A. Yes, sir.

8 q. J. Ford Pearson?

A. Yes, sir.

9 q. Alonzo Rawson?

A. No, sir.

10 q. Do you know Mr. Monroe?

A. No; I have no acquaintance with him.

11 q. Samuel Wing?

A. No, I don't know him.

12 q. Henry H. Honore?

A. Yes, sir.

13 q. Bryam Philpot.

318 A. Yes, sir.

14 q. Henry E. Picket?

A. Yes, sir.

15 q. Joseph P. Shepherd?

A. I don't know Mr. Shepherd.

16 q. How long have you known Mr. Kerfoot?

A. I have known Mr. Kerfoot since I became acquainted with him in the spring after I came here. I have known him since the spring of '66, quite early.

17 q. Mr. Pearson, the same?

A. No, I made Mr. Pearson's acquaintance about the time he went into partnership with Mr. Kerfoot. It wasn't until after that time.

18 q. What business has Mr. Kerfoot been engaged in since you knew him.

A. The business of real-estate agent. My first acquaintance with him was to buy a piece of property from him. I bought my residence from him.

19 q. Do you know anything about the property formerly known here as the Hopkins estate; estate of Arthur F. Hopkins; if so, what?

319 A. Well, by what you mean the property. I am not sufficiently familiar with Arthur Hopkins. I know the estate—the Hopkins estate—but I don't know his first name at all. If you call it the Hopkins estate, I will state that I do know; am acquainted with the property.

20 q. Situated?

A. Situated south of Egan avenue, between Indiana avenue and State street—along State street.

21 q. Please examine that exhibit *that exhibit* to the bill, and see if that is the property you mean.

A. Yes, sir; this Exhibit D referred to here is the property I mean. I know it very well.

22 q. Did you ever examine that property with the view of buying it?

A. I have examined it.

13 q. When was your attention first called to it?

A. My attention was first called to that property in the fall of 1866.

24 q. Please state the circumstances under which it was—it came to your notice, and what you did in regard to it in the fall of 1866.

320 (Objected to.)

A. The first piece of property, when I came to Chicago that I purchased, was situated near this—nearly opposite—on Indiana avenue. In visiting this property of mine frequently during the year 1866 my attention was called to this Hopkins property nearly opposite to it. My own had advanced at such a rapid rate that I desired very much to ascertain who owned the property nearly opposite to me. I didn't know at that time who owned it. I wished to purchase it if I could find out the owner, and could get it upon such terms as I thought it was worth.

(Answer objected to.)

25 q. Please state how learned who owned it, and that it was the Hopkins estate.

(Objected to.)

A. The way in which I learned who was the owner of it was through Mr. Kerfoot, having a good deal of dealings with him, seeing him very frequently in regard to property. I went with him in the fall to

321 look at a piece of property on Egan avenue, just west this property, owned by a man by the name of Holloway, which I afterward bought. While we were down looking at the property on Egan avenue, I called Mr. Kerfoot's attention to this Hopkins property, and told him it was property I would like to buy, and I would like to know who was the owner of it. Mr. Kerfoot told me he knew the owner of it. I told him I would like him to write to the owner, and get his terms, and see if he would sell. I called in frequently through the winter at Mr. Kerfoot's office. I don't recollect how often.

26 q. The winter of 1866 and 1867?

A. The winter of 1866 and 1867. I don't recollect the number of times, and asked him whether he had heard from the owner of the property. He told me that he had; that he was in communication with him, but they hadn't fixed upon any price; either they were not ready to fix

upon a price, or for some reason or other the price was not given. But the intimation was held out that the price would be obtained for
322 the property, and for me to call in and see about it, which I did. This was the state of affairs until some time in about the 1st of March; I don't recollect the precise date, but in that neighborhood, March, 1867. I was then, I had been burnt out recently before—my house—and was boarding at the Sherman House, with my family, at that time. One morning before I got out of bed, the waiter knocked at my door, and handed me a note—a card of Mr. Pearson, of the firm of Kerfoot and Pearson. This card informed me that they were now ready to sell this property; I don't recollect the exact words, but he told me to call over at the office—at their office—after breakfast. The card asked me—I should say I am a little too fast—the card asked me to come down stairs, he wanted to see me with reference to this property. I sent word by the waiter that I would go over to their office as soon as I got my breakfast. I did so; I went over to their office. My recollection is, that Mr. Kerfoot, at that time, was in Springfield,
323 attending to the sessions of the legislature. I saw Mr. Pearson alone, with reference to that matter, at that time. The substance of that interview was this—without undertaking to give the literal words of it, as I cannot undertake to do that—the substance was, the owner of the property, the party who had it for sale, had come all the way from Mobile, and was here to sell the property; and as I had been talking about it for so long a time, they proposed to sell it to me; they gave me the first opportunity of purchasing it. He said that the gentleman was not very well, and hated, disliked, to go out and ride at that time—at that time of the year, and would not be able to name the terms and price till he had—was able to drive down and see the property; he hadn't seen it; at least if he had ever seen it before, he hadn't seen it for several years, and wouldn't undertake to name a price until they had gone down to look at the property. Some days elapsed while they w waiting—
while he was waiting, rather. Mr. Pearson foun day that
324 would suit them to go and look at the property; the weather was very inclement. We had a good many conversations, backward and forward, Mr. Pearson and myself, about what the property was worth, and what the probabilities were of the price that would be fixed upon it. Mr. Pearson intimated that they would advise not far from a thousand dollars would be the price of the property, although he wouldn't undertake to say positively, and could not, until they had consulted; but that was his general view of the price that would be named. About this time Mr. Kerfoot returned from Springfield; and about the same time I received a telegram from Ohio, my former place of residence, which required my presence there—St'ubenville, Ohio—on important business. I called in Mr. Kerfoot's office before I left—the morning of the day I left, to ascertain whether they had yet been able to name a price. They stated that this gentleman, Mr. Walker, had
not yet been down to see the property, but they expected to take
325 him down that day. I told them that I was going away to Ohio, and I would like to make some definite arrangement about this property before I left. Mr. Kerfoot told me that of course they couldn't name the price until they had been down there; but he asked me if I would make an offer for the property, and I told him I would. I told him I would give him a thousand dollars an acre for the whole of it, with the exception of the 20 acres, the half of which I understood was an undivided half of the Hopkins' estate. I told him I didn't like to buy an undivided half of any person's property, if I could help it; and

I told him I would give a thousand dollars for the residue of the property. I told him I was about to leave, and would give my address in St'ubenville, where he could telegraph me whether that proposition would be accepted or not, after Mr. Walker examined the property. I left him my address, with the agreement on his part that he would
326 telegraph me if Mr. Walker would accept my offer, and if not, if he would name the price at which Mr. Walker would sell the property to me. I told him further, that I expected to interest a cousin of mine in this purchase, and that in order that we should have a complete understanding of it, he proposed to make me out a map, on oil paper, of the property—a tracing, on oil paper, to take with me. I called in, in the afternoon, to get the map; they gave the map to take with me, which I did, and also reiterated the promise that whatever price should be fixed upon the property by Mr. Hopkins, that I should have the refusal of it.

27 q. Mr. Walker?

A. By Mr. Walker, I should say.

28 q. Have you that map that was given you at that time?

A. No, I have not; I did have it for some time afterwards.

29 q. Well, what took place after you got the map?

A. Well, I left that day for St'ubenville. When I reached
327 there I showed this property, this plat in connection with a map of the city of Chicago, which Mr. Kerfoot gave me; little common maps which they had in the office—showed it to my cousin who desired to join me in the purchase; explained to him its advantages, situated nearly opposite to the property which I had bought—nearly opposite to it, and my belief in the rapid enhancement that would soon take place in property; he agreed to join me in the purchase; I told him of the price that I had offered; I told him that I had made a thousand dollars as an offer. But Mr. Kerfoot very well understood, as a real-estate dealer, when a man made an offer on property, and he offered a thousand dollars, it was very well understood that he would go a little better than that from his first offer—I mean where an offer comes from the purchaser, no price being fixed by the seller—I will make that in explanation of what I have just said. We did conclude that as soon
328 as Mr. Kerfoot's telegram arrived, if he declined the offer of a thousand dollars and named as a price twelve hundred, that we would take the property at twelve hundred dollars an acre. I waited after we had come to this conclusion several days, expecting daily, calling daily at the telegraph office—more than daily, calling two or three times at the telegraph office to see if there had been any mistake in my not getting a telegram from Mr. Kerfoot about the property. I finally became so impatient that I telegraphed to Mr. Kerfoot at Chicago to know why we didn't hear from him. In reply, very shortly afterwards, within—certainly within two hours, (I was astonished at the rapidity with which the thing could be done,) I received a telegram from Mr. Kerfoot stating that the property was sold.

30 q. Did you ever do anything further about the property; if any further—

A. Yes, sir, I did. Immediately on my return to Chicago.

31 q. When was that.

329 A. It was a short time after this; I don't recollect; a few days. I then called on Mr. Kerfoot the first day after I returned.

32 q. Please state what occurred between you and Mr. Kerfoot at that time?

A. He asked me into his back office, private room; I asked him how

it had come that he had sold the property in violation of his agreement to telegraph me what the property would be sold at. He gave this as the explanation of it that I didn't—I had told him that I didn't wish to purchase the undivided half of the twenty acres, and that Mr. Hopkins—

33 q. Mr. Walker?

A. Mr. Walker was desirous of selling the whole that he had together, and that as he thought I didn't want the undivided half from what I had said, ten acres, therefore he didn't see fit to telegraph me; that was his explanation of his reason why he didn't carry out the agreement made between us. In reply to that, I said to Mr. Kerfoot that I had his absolute promise that whatever price Mr. Walker
330 did fix upon the property when he had gone down and seen it, that he would telegraph me that price, and that I had a right to say Yes or No to the price fixed. I told him that I didn't say unequivocally that I would not buy the undivided half on any terms, but that simply that I didn't wish to purchase it if he would sell the other, the balance of the property, at a thousand dollars. I then asked him how he could sell that property. I asked him then what he got for the property. He told me eight hundred dollars an acre. I asked him how he could decide his duty to Mr. Walker by selling that property for eight hundred dollars an acre, when he had my offer of a thousand dollars an acre. I won't undertake to give the exact words here, and don't, but I undertake to give the substance of the conversation that occurred after this time, I don't pretend to give the exact words. His reply to me was (the only reply in all the conversations that I could get) was what I had before stated, which I considered an evasion
331 and subterfuge. I so told him. About this time I—I don't know whether he did—but I became very much excited when I learned that this property had been sold in this way. What I said afterwards to Mr. Kerfoot I don't and won't undertake to relate. I only know that some unpleasant words passed between us, because I charged him with—I charged him in some way or other, having some kind of an interest in the property. How it was I didn't know, but I knew I had been—Mr. Kerfoot wasn't going to sell property as a commission man, at a price that would reduce his commissions without having some interest in it.

34 q. That's what you said to him then, was it?

A. I don't say I said it in those words, but substantially I charged that upon him, and that we had some unpleasant words, and in anger, and I left.

35 q. Do you know whether Mr. Walker was here or not when you first received the card from Mr. Pearson?

332 A. I do know only from what Mr. Pearson told me. Mr. Pearson told me that he was here; that's the only way I had of knowing him.

36 q. Do you ever see him here, or did you see him here at that time?

A. No, sir; I did not.

37 q. Did you see him before you went to Ohio?

A. Not to my knowledge.

38 q. Did you have any opportunity to see him?

A. Well, I will qualify that in this way: I said that I didn't see him. I believe that I did see him and talked with him two or three hours, although I didn't know it was him, at the Sherman House. I boarded at the Sherman House at that time, and he stopped at the Sherman House. We were in the same house together. I recollect distinctly of having a conversation, a long conversation with the gentleman. I didn't ask his

name, nor he didn't ask me; just as strangers meet in hotels. Talked about a variety of things; about property here in Chicago; but I didn't know it was Mr. Walker until a long time after that.
333 I did not see Mr. Walker when he was here in Chicago at this time, but sometime after that, Mr. Walker called in my office. I forget now when it was. I think it was a year ago when I was rooming at the Opera House, and he called to see me then about the matter. I then recognized him as the person that I had had this long conversation with, although I said I didn't know it was him at the time. I was in communication with Mr. Pearson and Mr. Kerfoot about the property, and therefore I didn't talk to outsiders about it. I talked to them alone.

39 q. Did Mr. Kerfoot or Mr. Pearson hold out that they were the agents for the property, and had it in their hands for sale.

A. They certainly did.

40 q. And was it for that reason that you didn't seek the owners any further?

A. I had no desire to seek him, as when I deal with an agent of real estate, even when parties are in the city, I do not go to see the
334 owners. I deal with the agent, where it is through the agent I learn of the property.

41 q. Were you acquainted at that time with that property, and property in that vicinity—its value.

A. I was.

42 q. What was the value of the property at that time per acre.

A. I believe, as near as I can get at the value of property at that time, it was twelve hundred dollars an acre. I was willing to give it; would have given it.

43 q. How long have you dealt in property?

A. I now refer to the portion of it east of State street. I didn't consider the twenty acres west worth a much.

44 q. How long have you been dealing in property in that vicinity?

A. Well since November, 1865. I had occasion to inquire the value of property all around that neighborhood. I was interested in keeping the run of what my own was worth in that neighborhood.

45 q. Have you any means of knowing whether Mr. Walker
335 was here when you returned from Stu'benville?

A. No, sir; I have not.

46 q. When you called to see Mr. Kerfoot?

A. I have not.

47 q. Do you know what the present value of that property is?

A. Well it is worth from eighty to a hundred dollars a foot, whatever that would bring it at an acre.

48 q. Can you remember the first time that you and Mr. Kerfoot—or that you heard that Mr. Kerfoot was the agent of this property.

A. The first time that I learned that he was connected with the property and knew the owner of it was, as I before stated, in the fall of 1866, because I requested him to write, and he told me he had written at different times, (this the winter of 1866 and 1867,) making inquiries about the property, and I had every reason to believe, and did believe, that it was through this correspondence that Mr. Walker was induced to come here to sell the property. I believe that was evidenced from the very morning he got here. Mr. Pearson sent a note to
336 my room before I had got out of bed, and informed me the man was here, and to come down and see if he could not make the sale and the purchase of the property.

49 q. You never had an opportunity of negotiating with Mr. Walker at all.

A. No, sir; I had not.

50 q. When you told Mr. Kerfoot that you thought that eight hundred dollars—or, you say, that he told you he had sold it at eight hundred dollars, what remarks do you remember took place immediately after that interview?

A. My nearest recollection is that I asked him how he could sell it at that price, when he had a better offer.

51 q. Had you dealt with Mr. Kerfoot, or with Kerfoot and Pearson before that time in real-estate transactions?

A. Yes, sir; I had. I was in their office very frequently; Mr. Kerfoot was one of the first real-estate agents whose acquaintance I made here. I bought my residence from him when I came. I was in his office several times a week inquiring about property, and I was
337 purchasing very heavily in property. Up to this time I was quite intimate.

52 q. How heavily had you purchased?

A. I can tell you, if you will let me refer, in a moment.

53 q. No, just something near to it?

A. It won't take me half a minute. I can tell by just looking at a memorandum there in a half a minute.

(Witness refers to memorandum.)

Well, I had bought at that time this tract that I speak of for sixteen thousand six hundred and sixty-six dollars sixty-six cents, in 1865.

54 q. You bought that of Kerfoot and Company?

A. No, I didn't; that's the first property I bought. The next I bought of Kerfoot and Company. It was in April, 1866, my residence, at ten thousand five hundred dollars. The next property I bought I bought *of* at Mr. Kerfoot's special instance, raise the money and give him half of the profits; that property I paid twenty-nine thousand dollars for; the next property that I bought was in February of that year,
338 fifty-six thousand five hundred dollars. Mr. Kerfoot knows very well of the purchase of that property, because it was an investment that I made. I came very making an investment of that money with him. I gave him the preference over every one else. There were several properties that he had offered me, some of which I came very near taking. One was property owned by Bross, down here near the tunnel, on Washington street. Another was the building on Dearborn street, known as the Masonic Temple, I think. Another was the property at the corner of North Water, South Water, and Clark. I think that it is called Dale or Dole's building, or some such name, right down on Clark-street bridge. Mr. Kerfoot offered me all these properties, and looked them up, because he knew I wished to make a purchase of that kind, as an investment of money for my family; made a purchase, however, from another person for fifty-six thousand five hundred dollars. I think now I catch the very day that I left Mr.
339 Kerfoot with that understanding.

55 q. With the map?

A. With the map, I think I can tell the very day. I think it was the 4th day of March, 1867, because on that day, the day that I left, after I saw Mr. Kerfoot, I bought a piece of property and gave eighteen thousand dollars for it. Between the time I got the map that morning, and before I left that evening, I wrote the contract, while I was standing at the Sherman House, and got the omnibus to wait.

56 q. Can you tell what date you got back?

A. I cannot say.

57 q. Have you any means of knowing the day you got back?

A. I have no means of knowing how long I was down there. I have a general idea I was to be gone about ten days. But I won't undertake to say what time I was gone.

58 q.

A.

340 59 q. Had transfers of the property been made public here in the city of Chicago when you returned?

A. What is it?

60 q. Had transfers of the property from Walker to Derby been made public when you returned, or was it after you returned?

A. I didn't go to the records, and did not know when they were made public. I only know that Mr. Kerfoot acquainted me with the sale to Derby—told me that it had been made, and that a deed had been drawn.

61 q. Do you think you went away on the fourth of March?

A. Yes, sir.

62 q. Were you gone longer than ten days?

A. I can't undertake to answer that, except that it is mere recollection. It is my general recollection that I was gone ten days.

63 q. Were you gone fifteen days?

A. I couldn't say. If you were to ask if I was gone twenty, I could only give a general recollection in the neighborhood of ten days. I bought that year, the same year, about $225,000 worth of prop-

341 erty.

64 q. Do you know anything further in regard to the property or in regard to matters there?

A. In regard to this property?

65 q. Yes, sir, that you have not already stated.

A. Well, the only thing that occurs to me that I havn't stated, I don't think it was stated as to the—I recollect stating my offer as to the price, but don't think I stated as to the terms of my offer. My recollection is that I was not asked the question, and I don't think I have yet stated how this is.

66 q. What were the terms that were offered?

A. The terms were to be either one-fourth cash or $10,000 cash, I don't recollect which now, and the balance in one, two, and three years.

67 q. Was any terms presented to you by Kerfoot and Company or any conditions as to the payment of cash?

A. As to the payment of cash.

68 q. As to the payment of cash, time, or anything else.

342 A. Nothing more, other than he supposed it would be sold on the usual terms. There was no statement that it would all have to be paid in cash by any means.

69 q. About the difference in value between the property east of State street and that west, per acre, at that time, what is your opinion as to that?

A. My opinion is, that there was about $200 per acre difference at that time.

70 q. Was anybody else in the office when you were there with Mr. Kerfoot?

A. Well, nobody but his partner and his clerks, that I recollect of.

71 q. You say distinctly that you have not the map, or the card, or the telegrams?

A. No; I have not. I had them all on my return, when in Mr. Ker-

foot's office after my interview with him. I concluded that I had been sold out, and gave up the whole thing.

72 q. Your offer was intended to be an introductory for a purchase?

343 A. I looked upon it as all real-estate dealers do, when the seller will not name a price at which he will sell, asks for an offer from the buyer, it is not expected that a buyer, the first time he makes an offer, is going to name the highest price which he will pay. I state that to be a common understanding in trade—in business.

73 q. Was there a distinct understanding that he was to inform you of the price when it was fixed?

A. There was. There can be no doubt about it, that whatever was fixed upon, that was to be telegraphed to me at the address I had furnished him; and I was there to telegraph back whether I would accept or decline that offer. I was to have the refusal of it, too.

74 q. What did you say?

A. I was to have the refusal of it before it was offered to any one else. That was the understanding.

75 q. With whom did you have this understanding?

A. I had it with Mr. Kerfoot.

76 q. Himself?

344 A. Yes, sir; I did, because I had been talking about that property for nearly six months. I had been running in and out of their office about it for six months, off and on. Mr. Pearson called over and gave me his card as soon as the man came. I had been in and out, got his maps, and I wouldn't have left here without that understanding. I supposed it would be honorably lived up to.

The further examination of the witness was adjourned until 2 p. m., January 26th, at which time and place the direct examination was resumed, as follows:

77 q. Have you any means of knowing when you went away to St'ubenville, Ohio, in March, 1867?

A. I stated on my examination the other day that I believed it to be the 4th of March, 1867. Since that time I have made some examination of papers, and can say absolutely that I was correct in my supposition that it was the 4th of March.

78 q. You left here on the 4th day of March, 1867, for St'ubenville, Ohio, and you had the map which you took with you?

345 A. Yes, sir.

79 q. It was on that day that you got the map from Mr. Kerfoot?

A. It was.

80 q. You swear positively and absolutely it was on that day you left?

A. I do. I have seen memoranda and papers of my own since that time, that enable me to swear positively to the date.

81 q. Now, can you tell on what day you returned?

A. I cannot. That question was asked me in two or three shapes the other day on my examination. I stated then that I thought it was about ten days that I was gone. I cannot yet fix the date; but I have made an examination of my papers since my previous examination, and I have evidence that satisfies me that I was here the 18th of March, 1867.

82 q. Doing your own regular business on that day?

A. Yes, sir.

83 q. What is that evidence that satisfies you?

346 A. The evidence is my check drawn that day, here in this city, on my bank, the Merchants' National.

84 q. Read that check.

A. The check is as follows:

"No. 11.] CHICAGO, *March 18th*, 1867.

"Merchants' National Bank of Chicago pay C. J. Belike, or bearer, thirty-one $\frac{50}{100}$ dollars.

"31 50. MARTIN ANDREWS."

[Stamp, M. A. M'ch, 1867.]

(The check and accompanying letter is admitted without objection, as evidence of the fact that the check was paid on the 18th of March, 1867.)

85 q. I want to know the first business you did after you returned from St'ubenville, Ohio.

A. I have already stated in my previous examination that I called upon Mr. Kerfoot the first day after I returned here.

86 q. You must have called upon him on or before the 18th of March?

A. I have not any doubt I was here on the 18th; but whether I was here before that I am not sure.

MARTIN ANDREWS.

347 JAN'Y 24, '70.

Mr. WILSON, Esq., *Cash, &c.:*

D'r Sir: Will you have one of your book-keepers refer to the acc't & see when this check was paid.

Mr. Hill, who is the bearer of this, is anxious to establish the fact that I was in the city the day it bears date.

Yours, resp'y,

M. ANDREWS.

This c'k, No. 11, of Martin Andrews, dated March 18, 1867, $31 50, was paid by this b'k on the afternoon of March 18, 1867.

ALL. WILSON, *Cas. M. A. B.*

348 And I do further certify that the preceding deposition, taken on application of the complainants, in a suit now pending in the circuit court of the United States for the circuit, and northern district of Illinois, wherein John J. Walker et al. are comp'ts, and W'm M. Derby et als. are defendants, was reduced to writing by me, and signed by the said Martin Andrews in my presence, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and official seal this 26th day of January, A. D. 1870.

[SEAL.] S. W. BURNHAM,
U. S. Com'r, Northern Dist. Ill.

(Endorsed:) Filed Feb'y 21, 1870. W'm H. Bradley, cl'k.

349 Be it remembered that, on application of John J. Walker et als., the complainants in a suit now pending in the circuit court of the United States for northern district of Illinois, wherein John J. Walker, Maria Walker, William Barnewall, et als., are complainants, and W. M. Derby, Sam'l H. Kerfoot, J. Ford Pierson, et als., are defendants, I, S. W. Burnham, United States commissioner in and for the northern dist. of Illinois, have heretofore on the days of March, respectively, A. D. 1870, hereinafter set forth, in the city of Chicago and State aforesaid, by consent of parties. notices being waived, proceeded to examine James W. Pryor, Lewis W. Stone, N. P. Smith, & A. J. Averill, (in the presence of E. J. Hill, esq., of counsel for compl'ts, and John J. McKinnon, esq., of counsel for defendants, the said counsel respectively putting interrogatories to said witnesses,) as witnesses on behalf of the complainants in the aforesaid suit.

And I do further certify that the said James W. Pryor, Lewis W. Stone, N. P. Smith, and A. J. Averill, each being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says, respectively, as hereinafter set forth:

350 *Deposition of Ja's W. Pryor.*

WALKER ET AL.
vs.
DERBY ET AL.

Deposition of James W. Pryor, March 10th—18th, 1870.

351 1 q. What is your name, age, residence & occupation?

A. My name is James W. Pryor; age, 63; occupation, nothing; residence, city of New York.

2 q. Do you know the complainants, or any of them, & how long have you known them respectively; and where do they reside?

A. I know most of them, & have known them between 20 & 30 years. Some I don't know; but if you will read over the list, I will tell you.

3 q. Do you know J. J. Walker?

A. I know him.

4 q. Mary Walker?

A. Yes, sir.

5 q. W'm Barnewall?

A. No.

6 q. Mary M. Barnewall?

A. Yes.

7 q. Henry A. Lowe?

A. Yes, sir; I have seen him but once.

8 q. Cornelia C. Lowe?

A. Yes.

9 q. Augusta H. Rice?

A. Yes.

10 q. W'm H. Hopkins?

A. Yes.

11 q. Stark H. Oliver?

A. No.

12 q. Kate E. Oliver?

A. Yes.

352 13 q. Those you do know *who* are respectively the widow & children of Mr. Hopkins?

A. Yes, sir.

14 q. They live at Mobile?

A. Yes, sir.

15 q. Do you know the defendants?

A. Yes, sir.

16 q. How long have you known the defendants Kerfoot & Pierson?

A. Since 1852 & 1853—that is, Mr. Kerfoot—& Mr. Pierson since Dec. 1866.

17 q. State whether or not you were acquainted with the late A. F. Hopkins, of Mobile, Ala.?

A. Yes, sir; very well.

18 q. How long had you known him before his decease?

A. Nearly 30 years.

19 q. State whether or not you & he are cotenants of certain property in the county of Cook, State of Illinois?

A. Yes, sir.

20 q. What property?

A. The west ½ of the N. W. ¼ of section 3, township 38, range 14.

21 q. Of whom was that property purchased?

A. H. G. Loomis.

22 q. Through whom?

A. A man by the name of J. B. F. Russell.

23 q. What disposition did you & Judge Hopkins make of the property, as cotenants?

353 A. What do you mean?

24 q. Was it subdivided?

(Objected to.)

A. Do you want a history of the subdivision?

25 q. Yes.

A. I bought the north 70 acres of that parcel in April, 1853, for $21,000; & in the spring, I think, of 1854, I bought the south 10 acres, & received a deed for them from a man by the name of C. L. Hermon, I think.

26 q. Who were your agents in making the subdivision?

A. Kerfoot & Co.

27 q. Please look at that, (handing witness Exhibit D to the amended bill,) & examine it & see if that is a plat of the property as subdivided?

A. I think it is.

28 q. It is substantially the same as Exhibit D to the amended bill?

A. Yes, sir. I think that map was made by Mr. Greely, under the supervision of Mr. Kerfoot. I spoke to Mr. Kerfoot about the subdivision, & he attended to the whole matter, I think, through Mr. Greeley.

29 q. When was that subdivision made?

A. I think that was made in May, 1856, but I am not certain about that; I think it was. The records of the court will show.

30 q. How long has Mr. Kerfoot been your agent for these lands?

354 A. Well, I think, though I am not certain, from about 1853—1853 or 1854; I am a little uncertain whether it was 1853 or '4. I think he was then a partner of Mr. Rees.

31 q. Kerfoot & Co. have been your agents since their partnership?

A. Yes.

32 q. In what did that agency consist?

A. They were my agents for anything that was done in connection with the property—paying taxes, & looking over it, & so on.

33 q. Were they, or not, agents for Judge Hopkins during his lifetime?

A. I think so. Mr. Hopkins & I were here in 1854, & we had no other business here than in connection with the real estate. We were in the office of Mr. Kerfoot a great deal, & I know Mr. Hopkins said a great deal.

(Objected to.)

By Mr. Monroe:

Mr. Pryor, we wan't you to speak from your own actual knowledge, & not from hearsay.

A. I thought I was speaking from my own knowledge when I said Mr. Hopkins & I were in the office of Mr. Kerfoot a great deal, & that I know that we informed him that Mr. Hopkins had an interest in this land. I supposed that was an actual fact within my own knowledge. I state it as a fact within my knowledge. We bought, through
355 Mr. Kerfoot, 10 acres of land as tenants in common.

34 q. Part of this land?

A. No, sir; another parcel.

35 q. State whether or not you sold a part or portion of that real estate to Mr. W'm Derby, in April, 1867?

A. I did.

36 q. Who were your agents in effecting that sale?

A. Kerfoot & Co.

37 q. Look at the plat, & describe the land that you sold, & state how much, & at what price?

(The whole of this testimony is objected to by Mr. McKinnon, & is taken subject to the objection.)

38 q. What time in April did you sell it, & what did you sell?

A. I think I sold the west ½ of block 1, the whole of block 2, the W. ½ of block 6, and 1 acre, or about one acre, in block 3, in the S. W. corner of the block. This mark here indicates it, (referring to marks on the plat.)

39 q. State when you sold it.

(Objected to.)

A. I think the deed was made on the 19th of April, though I am not certain about it; but that is my recollection—that it was made on the 19th of April, 1867.

40 q. Do you know what the market value of the land was at that time?

A. No, I don't.

41 q. Have you any means of knowing, or had you any?

A. Well, upon inquiry & upon information obtained since, I
356 could give an estimate. At that time I didn't.

42 q. Do you, of your own knowledge, know the value of the property at all in Pryor's & Hopkins' subdivision at the time you sold it?

A. I think not.

43 q. Prior to that sale had you received any offers for that land, or any part of it?

A. Yes.

44 q. Please state what offers you had.

A. In January, I think, or December, late in 1866, or early in 1867, I received a communication from a person in New York, named McLean, who inquired of me about these lands, & shortly afterwards I called at his office—the office of Mr. Lancaster, No. 18 Wall st., I think. He said there were parties out here in Chicago who would like to buy my lands,

& wanted to know if they were for sale. I said I hadn't offerred them for sale, but that I might sell them. I then showed him, on maps which he had in his office, the lands which I owned. I don't remember that I showed him every little parcel, but I showed him the subdivision on maps which he had in his office. I then said that I might accept an offer for these lands, though I didn't invite any, & didn't make an offer, but that I might, perhaps, accept an offer; & that, if an offer were made me, I would treat it civilly. He said he would write to Chicago, & would let me hear from him in a few days.

(Objected to.)

357 A. In a few days I saw him again, & he said his party would give $1,500 an acre for the lands, as I understood, for the whole parcel. I said I wouldn't take $1,500. He said, "They will give you more than $1,500 if you will name some reasonable price beyond that." I said I wouldn't name any price at all. "As long as parties choose to make offers they can do so, but I wouldn't." We separated, & there was an end of it. I never heard any more from him. How much more he would give I don't know.

45 q. Did you receive any more offers?

A. Yes, sir. A man by the name of Towne offered me $1,500 an acre for this land in the S. E. ¼ of block 3. He keeps the City Hotel here. At that time he kept the Garden City Hotel.

By Mr. Monroe:

For which portion?

A. In the S. E. ¼ of the block.

46 q. For that acre?

A. Yes, sir. I declined the offer. Do you want any other offers that I got?

47 q. Yes; all of them.

A. This was while I was in New York. I know the McLean offer was made while I was there. The Towne offer was made while I was in New York, I think, but Towne thinks he made it to me here. That is a point that I am not certain about, though I came here about the 8th or 9th of April, I think, after these offers had been made to me. Several

358 letters had been written to me by other parties, not making any offers, but making inquiries as to whether the lands were for sale, &c. I came out about the 8th or 9th of April, & staid here some time waiting for the vote upon the park question, & the day before the park vote was taken Mr. Kerfoot asked me specially about the lands that I owned in blocks 1, 2, & 3; & I am not certain that he asked me about what I owned in block 6; but I am certain that he asked me specially about what I owned in blocks 1, 2, & 3, & he made a minute on a small piece of paper of the amount which I owned in those blocks. He then asked me if I had placed a value upon them yet; he had frequently asked me these questions before that time. I always said that I hadn't. I knew they were worth, at least, $1,500 an acre, because that had been offered me sometime before. He then said, "Will you take $1,500 an acre for this land?" I declined it. In the afternoon, I think it was, Mr. Kerfoot called upon me at this hotel here, to say to me that it was his opinion that the park would be defeated the next day, & he gave me the names of two or three city officials who expressed the same opinion to him—that it would be defeated. He then said, "Now, I can sell these lands," mentioning the lands in this memorandum, * "to-day at $1,500 an acre if you will take it, but the party who makes the offer says he will not pay it after to-day if the park be defeated." Well, I said

I wouldn't take it. I had resolved, before I came out, to sell
359 nothing until that park matter was settled. That was a point upon which I was quite determined. I declined that offer. So that I received those offers that I have named for that land, besides letters and applications which I received from parties here in Chicago. Those numerous applications gave me the idea that my lands were becoming valuable. That is my answer to your question.

(Answer objected to.)

48 q. Do you know anything of a sale of a portion of the land that belonged to Judge Hopkins to the defendant Derby?

A. Nothing but from information.

49 q. When did you first hear of that sale?

(Objected to.)

A. About the 23d, 24th, or 25th of March, 1867.

50 q. How did you hear of it?

A. I received a letter from Mr. Kerfoot, dated the 20th of March, informing me that Mr. Walker had left the day before for Mobile, having disposed of all the lands of the Hopkins estate while he was here. That was the first information I had of it.

51 q. Do you remember writing a letter to Mr. Walker expressing an opinion relative to the sale to Derby?

A. Yes.

52 q. Have you a copy of that letter?

A. No.

360 53 q. Do you remember what you wrote?

A. Yes; I recollect part of it. I recollect I wrote to him, stating that I had received a letter, giving an account of the sale, and that I was confounded by that information—I think confounded is the word. I then informed him, I believe, of those offers I had received. I am satisfied I gave him that information. What else I said I don't remember distinctly; I think I wrote to him to give me some explanation; how it happened that the lands had been sold so cheap. I can't give anything very definite besides what I have stated.

(Objected to.)

54 q. At the time of your sale to Mr. Derby in 1867, did you know that Kerfoot & Co. were interested in the Walker sale?

A. No.

55 q. Do you know they were to have an interest in the land purchased from Mr. Walker by Mr. Derby?

A. No.

56 q. When did you first learn of their being interested in the property?

A. In July, 1868, I think.

(Objected to.)

57 q. How came you to sell to Mr. Derby?

A. Well, that would rather involve a long history. I owned, as this map shows, a good deal of land north and south of these Derby
361 lands, as they are called, all together between forty-five and fifty acres at that time. Well, very soon after I came to Chicago, I saw Mr. Derby, and had a good deal of conversation with him about real estate in that quarter, and Mr. Derby was very emphatic in saying to me that I ought to sell some of my land, before I should leave for New York; that it was a great disadvantage for a non-resident, or any person, to own so large a body of land in an unimproved neighborhood. It was a blight upon the neighborhood, and I owed it to myself and other property-holders to sell some of it before I went home. I had de-

termined, as I stated previously, not to sell any lands until this park question was settled, and therefore I declined selling. I had, with him, frequent conversations of that kind—a number before the election took place. After the park matter was defeated—as soon as that was known—I said to Mr. Derby and Mr. Kerfoot, that now I should go home immediately, as it was no time to sell property after such a defeat as that, and I would go home. Mr. Derby then repeated these conversations with me to some extent, and said he was very sorry that I was going home without selling, that he had got an interest in the neighborhood there, and he said he hoped I would do what was necessary to assist the neighborhood to come out. He then stated that he had intended to build on these Walker lands, and put up some valuable
362 improvements, but if I went home without selling any of my lands, he would resell the Walker lands which he had bought, as he could sell them at a good profit, and he would go out of the whole thing; that he would not put up valuable improvements where another was to receive larger benefit than himself in the improvements, and by looking at the map there, I would have got the chief benefit in the lands north and south of him. He spoke very emphatically, and in that way. This conversation had, of course, made an impression upon me. I saw the force of the arguments that were addressed to me, and finally Mr. Derby asked me what I would sell the lands north of the railroad in blocks 1, 2, and 3, and I think the west half of block 6, for. I said $1,500 an acre. Mr. Derby declined taking them at that price. I then said to him, "Suppose you make an offer;" he said he wouldn't, and declined to do so. After a while he made an offer of $20,000 for those lands in blocks 1, 2, 3, and 6; $8,500 payable in a lot on Michigan ave., within the city limits, and the rest one-third cash, and the residue in one and two years, with six per cent. interest. I consulted Mr. Kerfoot after arriving in Chicago at his office; I was consulting with him constantly about the property & the prospects of it. I talked with Mr. Kerfoot about the matter, & Mr. Kerfoot was acquainted with what Mr. Derby had said about the buildings & improvements he had in-
363 tended to put up there. I knew nothing of Mr. Derby at all before; I had never seen or heard of him before, & knew nothing about him.

58 q. Who first introduced you to him?

A. Mr. Kerfoot. I asked Mr. Kerfoot what he knew about Mr. Derby; whether he was a responsible and reliable man; whether his word was perfectly good; whether he was trustworthy, & truthful, & state if he was such a person as that it might be very much to my advantage to sell the land at a good deal less than they were really worth, that by doing so I could secure such improvements as Mr. Derby had proposed to put up. I asked Mr. Derby in reference to the improvements he proposed to put up, & he said they would amount to some $18,000 or $20,000, which he would put up immediately; I asked him specially what he intended to do about that. Mr. Kerfoot said that Mr. Derby was a thorough responsible man, abundantly able to make the improvements he proposed, & that he was a perfectly reliable & trustworthy man every way, & had no doubt he would do all he promised to do. He then stated that Mr. Derby was the best man in the city of Chicago to whom I could make a sale of any of my lands with a view to benefit the residue of the lands, from his means & character, & his way of operating. He was the best man I could sell to.

59 q. Did you try to sell to any one else, other than Mr. Derby at that time?

A. No, sir; I had refused from the time I came to Chicago,
359½ to discuss, or talk about selling, with anybody. I made no offers to anybody.

60 q. Were you trading in other real estate; were you in other real estate offices than Mr. Kerfoot's?

A. No; I don't think I asked a man in the city of Chicago what the lands were worth, or anything about their value. I think two or three persons gave me their opinions. Mr. Clark, of Clark & Layton, who I went to see, not in connection with my lands, but my having seen his name in a communication in relation to the park. He knew who I was as soon as I introduced myself. I think he said the property was worth from $1,500 an acre to $2,000 an acre; but if the park will be adopted it will be worth the next day $4,000.

61 q. Do you remember any conversation that you had with Mr. Kerfoot about the Walker sale?

A. I can't say that I remember distinctly any particular language. Mr. Kerfoot said to me a good deal about it, but I really don't remember now anything special that was said.

62 q. Do you remember of expressing an opinion to him that the sale was a good one, you thought?

A. No; I do not. I think it is impossible that I should have expressed such an opinion to him.

63 q. Did you say anything of that kind to anybody?

A. Not to my recollection. I think therefore it is impossible I should have made such a statement to any one. If I did make such a
365 statement it was an untruth, for I certainly never thought so; therefore, I think, I never could have made such a statement.

64 q. Can you state any facts that were communicated to you in regard to that sale by Mr. Kerfoot at that time, when you came here in April, 1867?

A. The Walker sale?

65 q. Yes, sir.

A. Well, I don't know that I can; I don't remember any fact that he mentioned in connection with it; I don't recollect at all.

66 q. Do you remember of riding down to see the land with Mr. Kerfoot about that time.

A. I can hardly say I do. I understand that Mr. Kerfoot says I rode down with him. His statement to that effect creates an impression in my mind that I did. Apart from that statement I couldn't say; I don't recollect. I am not prepared to say it wasn't so; I think it is probable. I have ridden down there more than once with Mr. Kerfoot, but I am not certain about the occasion.

67 q. You were well acquainted with the location of the lands & the surface of them in 1867?

A. I couldn't say I was—not in particular; I know a great deal more of them within the last three years than before.

68 q. Examine that map & say if the part within the irregular lines is a slough?

A. There is a good deal of that a slough, & a good deal of this a slough in block 4.

366 69 q. Please mention the blocks.

A. Block 4, & the parcel west of State st., & south of the cattle-yard railway. I have been on the land quite recently, & I think there is as much slough land in proportion to quantity of land that Mr. Hopkins & I had—more slough land in blocks 9, 10, 11, & 12, than there was in the Hopkins land east of State st. I say nothing of the lands

west of State st. My testimony is confined to the land in Pryor & Hopkins' subdivision. There is a good deal of slough land on that which I owned. I should think there is as much in proportion to the land I owned, as there was in the Hopkins land in the proportion that he owned. I never attached any importance to that slough. I never bought it with a view to garden or farm purposes, but in reference to its location to the city. I ought to state in connection with the offer that Mr. Kerfoot made me of $1,500, the day before the park election, that when he made *he made* a minute of this land on paper, he made an exact estimate of the quantity of acres, & what the amount would be, at $1,500 an acre.

70 q. Did he include or exclude streets in that estimate?

A. I think that included streets. I think, at that time the estimates were based on the original quantity of land.

71 q. You purchased that land originally, didn't you?

A. Yes.

367 72 q. Do you remember of saying to Mr. Kerfoot at the time you drove down there, that if you had known it was such bad land, you wouldn't have purchased it?

A. No, sir; I have no recollection that anything of the sort was said by me.

(All this testimony taken subject to the objection of the defendants.)

A. I think I couldn't have made such a statement, because I didn't regret at the time that I had bought the lands; still I don't say I didn't make such a statement; that is a point that I am not prepared to state positively about.

73 q. You stated you made a sale to Mr. Derby about April 19th, 1867?

A. Yes, sir.

74 q. Please examine Exhibit D to the amended bill; read it & say if that is a correct statement of the transaction of the sale.

A. I don't stop to make an exact computation of the correctness of it, but I think that presents the thing about correctly.

(The witness now speaks of a portion of Exhibit D having reference to a prior sale—a letter of Mr. Kerfoot attached to the amended bill.)

75 q. Do you know anything further you can state of benefit or advantage to the parties in this case?

A. I don't know that I do; I can't determine a question of that sort.

368 76 q. I wish to put a question in regard to the general statement in this exhibit, commencing with "he sold a certain number of feet for $20,000," & closing with the statement that "you made a mistake in selling it," & that "you made a most egregious error;" that "you had an exalted idea of the value." I want you to examine that statement, & state whether it is true in point of fact.

A. I think that represents the result nearly with accuracy. I think there is another fact that I ought to mention: I remember very distinctly having said to Mr. Kerfoot before this sale to Mr. Derby was consummated, that I could well afford to loose $500 an acre on the lands I was selling to him, if it were necessary, & if by so doing he would put up the improvements he proposed, because I would still have some 30 acres which would be probably worth $500 or $1,000 an acre, & probably more. I could afford to do so if it were necessary. Mr. Derby stated to me that I could afford to sell the lands to him very cheap, or even give them to him, if I could have such improvements put up as he proposed,

as I would be so much benefitted by the improvements on the rest of my land, that I would be much better off than before.

77 q. Now, as to the relative value of the two properties—your property & the Walker property in Prior & Hopkins' subdivision—the land sold by Mr. Walker & the land owned by you.

A. The comparative value?

78 q. Yes; of the two pieces of property in 1867.

369 A. Do you want me to state that?

79 q. Yes.

A. There are four rows of blocks here, 1, 2, 3, & so on. I owned the lands north of the railroad, which had a fine surface & was the nearest to the city, & which was altogether worth a great deal more than any other land in the parcel—how much more I don't know. I always knew they were worth more. Then came the three blocks owned by Mr. Hopkins; then came three more to me, & three more still to me. Now, I think the Hopkins three blocks, being nearer the city than my six blocks—some of mine lay a quarter of a mile south of his—I think the Hopkins blocks were worth a good deal more than my southerly lands.

(Counsel for the defendants objects to all the foregoing answer.)

A. My lands were worth a good deal more than the Hopkins lands—that is, my northerly lands. My southerly lands were worth a good deal less than his; they lay further from the city; there was more bad surface—more than twice as much in mine than in Mr. Hopkins' parcel, I having twice as much land south. The specific difference in the value, I am not prepared to say anything about.

(Mr. McKinnon objects on behalf of Messrs. Kerfoot and Pearson, to all the foregoing testimony—both questions and answers.)

370 Cross-examination by Mr. McKinnon:

1 q. What has been your occupation in life?

A. I was a lawyer until about twenty years ago.

2 q. How long did you practice law, and where?

A. About fifteen years, in the State of Alabama.

3 q. How long have you lived in the city of New York?

A. Since May, 1862.

4 q. Have you been in the city of Chicago frequently since your residence in New York?

A. Yes, sir.

5 q. How many times, as nearly as you can state?

A. I was here in 1852, 1853, 1854, and I think, in 1855; perhaps in 1856, and I think, in 1858, and again not until December or November, 1860, and then not until December, 1866, and then in April, 1867; I think, in December, 1868, in July, 1867, and in May, 1869. I think those include all the visits I have made to Chicago.

6 q. Where were you between 1860 and 1866?

A. Living in New York.

7 q. Between those years you had not been in the city of Chicago?

A. No, sir.

8 q. Are you pretty well acquainted with the city of Chicago?

A. I am acquainted with a few persons connected with land matters, but I couldn't say I was well acquainted with Chicago.

371 9 q. Were you in 1867?

A. Not as well acquainted then as now. I knew very few people in 1867.

10 q. Were you acquainted with many land agents in Chicago, in 1867?

A. Yes; I knew James Rees; I knew William Kerfoot, and S. H. Gehr.

11 q. Did you know Clark and Layton?

A. Mr. Clark, only; and Mr. Harvey in the way I have mentioned. I only know them as I called at their office. I don't know that I saw any of them in the year 1867; I am not certain about that.

12 q. What has been your business since you quit practicing law, principally; in what business have you occupied yourself?

A. Nothing at all.

13 q. Have you given any study to the subject of real estate since that time?

A. Yes.

14 q. To what extent?

A. My study on the subject of real estate has been generally in regard to the growth of Chicago. I invested in Chicago early.

15 q. Had you operated any in real estate before you invested in the city of Chicago?

A. Yes.

16 q. Where?

A. Montgomery, Alabama.

17 q. Then, since your purchase in Chicago, you have given
372 considerable attention to the subject of real estate?

A. Yes; not with the special object of ascertaining the value of real estate. I have owned a large interest lying here for several years. I have thought of that a great deal and have considered the growth of Chicago a great deal.

18 q. You had a very strong idea that it would grow?

A. Yes.

19 q. That was your opinion always?

A. Yes, strongly.

20 q. You made a sale of some property to Mr. Derby as you have stated?

A. Yes.

21 q. Was it situated in the Pryor and Hopkins' addition to the city?

A. Pryor and Hopkins' subdivision—not in the city.

22 q. What quantity in acres did you sell to Mr. Derby?

A. As appears in that statement it was between fourteen and fifteen acres. I have stated that that statement is nearly correct.

23 q. The statement at the close of Kerfoot's letter, you mean?

A. Yes, sir.

24 q. Where was it situated with reference to the lands which Mr. Derby bought of the complainant J. J. Walker?

A. Directly north—between them and the city.

25 q. It was nearer to the city than those lands purchased of Mr. Walker?

373 A. Yes.

26 q. All of it?

A. No, sir; half of block 6—just the same distance as the Walker land.

27 q. Which side of State street were the lands you sold to Derby?

A. East.

28 q. Whether are the lands more valuable on the east or west side of State street?

A. Much more valuable on the east side—that is of State street—on State street itself there isn't I think much difference. I think the lots on State street all the way down, are nearly of the same comparative

value, but as soon as you get back from the street west the lands are worth much less than the lands that lay east.

29 q. Was any portion of the lands that Mr. Derby bought of Mr. Walker situated west of State street?

A. I am not prepared to say anything about that. I have understood they were, that is my understanding. I knew the lands very well west and I knew that Mr. Hopkins had an interest in those lands, and I always understood that Mr. Derby bought his interest in those lands.

30 q. Do you know what quantity of the Hopkins lands lay west of State street?

A. About ten acres.

31 q. That is what you understood that Mr. Derby purchased?

374 A. Yes, sir. There was an undivided parcel of about twenty acres and the Hopkins' estate owned one-half of that.

32 q. Do you know of any improvements having been made on the portion of property purchased by Mr. Derby either from you or Mr. Walker.

A. Yes, valuable improvements have been put up on the lands I sold him.

33 q. How valuable?

A. I don't know, but I have heard Mr. Derby say, it seems to me, some $60,000, or may be more.

34 q. Have these improvements in any way benefitted your property; that is, all you have retained?

A. I think they have very materially, but I may state they were put up within the last 18 months.

35 q. Within the last 18 months?

A. Yes, as I understand it, I think so. My sale was made nearly three years ago.

36 q. Do you know of any other improvement having been made in the vicinity of these lands since March, 1867?

A. Well, yes; I saw four or five new houses down off east that have been put up within the last year—since last May.

37 q. When did you last visit the lands?

A. Last May—until on this visit; I have been down there this time.

38 q. Did you notice any railroad shops or buildings in the vicinity of these lands?

375 A. Yes; the round-house, I believe they called it, built by the Michigan Southern Railroad Company.

39 q. Any other round-house or railroad shops south of those lands?

A. I don't recollect that I did on this occasion, but I believe there is a bridge-building concern over west some distance—west of the lands—west of State street.

40 q. Whom did you go with the last time?

A. With Mr. Derby the other day, three or four days ago I went down with Mr. Pierson.

41 q. That is Mr. Kerfoot's partner?

A. Yes.

42 q. Do you know of any large works or shops having been built by the Rock Island R. R. Company?

A. Yes, that is as I understand, a mile below; at all events large works have been put up by the Rock Island Railroad Company—workshops and other important improvements.

43 q. All the improvements to which you have referred—the railroad shops, houses, and other improvements have been put up since you and Mr. Walker sold to Mr. Derby?

A. Yes; it was a wild prairie when I sold.

44 q. Those improvements have greatly enhanced the value of the lands?

A. Yes.

45 q. After you made sale of these fourteen acres to Mr. Derby about which you have talked, did you make a sale of any other blocks in your property to him?

376 A. He asked me what I would take for blocks 7, 8, & 9, I think, immediately after we agreed upon the other sale. I told him I didn't own all of block 9. I think it was about eighteen and three-quarters acres of the three blocks. I offerred him those blocks for $25,000, as I remember now.

46 q. How many acres?

A. About eighteen and three-quarters.

47 q. You offerred it to him for $25,000?

A. I think I told him I would take that.

48 q. Did he purchase it?

A. No.

49 q. When was that offer made?

A. I think that was made as soon as we came to terms about the sale. I don't remember that anything took place about the matter afterwards.

50 q. Do you recollect having a conversation with H. S. Monroe about selling him the three blocks below?

A. No; I have no recollection of having any conversation with him on that subject.

51 q. Do you recollect of offering them for $24,000—$8,000 in cash and the rest at eight per cent. semi-annual interest?

A. No, I can't remember that I had any conversation about it.

52 q. Prior to the sale of your fourteen acres to Mr. Derby, or about that time, what was the condition of those lands and of that in the vicinity thereof?

A. As I stated before, it was wild prairie, with two or three
377 little houses only in the vicinity—no more than three or four, anyhow.

53 q. Did you sell any more of your lands down there?

A. Not at that time.

54 q. Any time?

A. Yes, since.

55 q. Have you since sold block 7?

A. Yes.

56 q. When?

A. July, 1868.

57 q. At what price?

$31,914, I think.

58 q. To whom?

A. Charles Fargo.

59 q. Have you sold block 8?

A. Yes.

60 q. To whom, and when?

A. I sold half the block to W. H. Rice the 1st of last March, I think, and the west ½ of block 8 to Winchester Hall last August.

61 q. At what price in each case?

A. $40,000 from Mr. Rice, and $40,000 from Mr. Hall.

62 q. Through whom?

A. Mr. Derby?

63 q. Both the blocks?

A. Yes.

64 q. At what time did you sell the last ½?

A. The 14th of August, I think.

378 65 q. What year?

A. 1869.

66 q. What block did you sell at $31,914?

A. Block 7.

67 q. What year?

A. 1868.

68 q. What time in the year?

A. The 30th of July, I think.

69 q. Then in 1869 he sold block 8?

A. Yes.

70 q. For how much, entirely.

A. $80,000.

71 q. Property had increased somewhat, hadn't it? What have you done with block 9?

A. I have sold nearly half of it since.

72 q. When?

A. December, 1868, or January, 1869, I think.

73 q. To whom, and at what price?

A. Well, I sold that through Kerfoot and Company; part of it, I think, at $40 per foot—two hundred feet or two hundred and fifty feet, I don't remember which; the residue of the west half at $50 per foot. The first was sold to Elijah Warren, and the last to S. E. Gross.

74 q. From the study you have given the subject of real estate in Chicago, please explain, if you know, what caused the great rise in this property that belonged to you, and of which you made sale.

A. In that neighborhood?

379 75 q. Yes.

A. Well, I must go back a little way. I held that land from 1853 up to 1867 with very little movement indeed, except from 1853 to 1857. The panic came on, and from 1857 to 1867 I think I never made a sale. I didn't come here from 1860 to 1866. I had the greatest confidence all the time in the property. I knew it was merely a question of reasonable time before the market value would increase very much. There was a race course or trotting park immediately between my lands and the city, occupying sixty acres of land, which was a flat bar to anything like progress in my land. It was removed in 1867, and the streets extended through. That was one thing which operated to enhance the value of these lands. Soon after that, or at the time I was here, I remember there were petitions passing around for the opening of Michigan avenue down to the junction. I signed a paper of that kind.

76 q. When was that?

A. I believe April, 1867. I understood that would be done, and in a reasonable time the streets would be graded and graveled, perhaps. After that came the Rock Island works and various other improvements, and then there was the general thing which operated upon all real estate in Chicago, specially. I understand that all the real estate on those avenues have advanced in a similar way inside the city

380 here down to the junction, since I sold.

77 q. Did you regard the race course as any particular benefit?

A. No, but as a very great detriment.

78 q. Do you remember at what time that was removed?

A. That must have been removed very soon after I was here. I was here in April, 1867.

79 q. It was in the spring of 1867—May or June?

A. It was removed in the summer afterwards.

80 q. Was not that race-course a very great detriment to the sale of the lands?

A. Yes. It was known that it was going to be removed. The owner told me so. When I sold it was known that that impediment would be removed immediately.

81 q. Hadn't the buildings erected through the instrumentality of Mr. Derby, the defendant here, a very great deal to do with the improvement of the property down there?

A. I can't see how it improved property two or three miles below that. O yes, it has been a great benefit to my neighborhood undoubtedly, but that benefit I didn't get until within the last 18 months.

82 q. You have got it?

A. Yes.

83 q. It was some benefit when you made the sale of the block for $80,000?

381 A. I presume it was. O yes; I made that sale within the last 18 months.

84 q. I didn't ascertain from you the number of acres that were in that block?

A. About six and two-thirds acres, including the streets.

85 q. Didn't you know, as a matter of fact, that Mr. Derby has been hard at work since April, 1867, to improve all that property around there?

A. I think he has been; he had a very large interest there, and I think he went very actively to work to improve the value of the property by talking, and acting, and so on.

86 q. He did a great deal towards opening the streets, didn't he?

A. I don't know anything about that but what he told me, and I am willing to believe he told me the truth. I believe he had a good deal to do with it. Nobody else ever spoke to me about it. On his representations I am willing to take it that it is so. I think I ought to state the particulars of the $8,500 transaction for the Michigan Av'e lot. I think I owe that to myself to make that statement. Mr. Derby offered me that at $170 a foot, and said he had been offered $170 a foot for it, and it was worth that. I spoke to Mr. Kerfoot about it, and he said that it wasn't worth $170 a foot, but it was then worth $160, and that
382 he thought they could readily sell it for that. I stated at the time that, if I took that land from Mr. Derby, I should take it to resell it immediately. I said to Mr. Kerfoot, when I bought it, that I should put it in their hands immediately for a resale, for I didn't intend to keep it. I wouldn't take it to keep. When I took it I put it into their hands to sell at $160 a foot. It wasn't sold until September 23d, when it was sold for $135 a foot. I paid $170; I paid that on the faith of the statement of one of the parties that the land was worth $170, and of the other party that it was worth $160.

Redirect examination by Mr. Hill:

1 q. There is a statement in that printed bill that Mr. Prior had an exalted idea of his land. Is that statement true in fact?

A. Yes, it is. I had. I stated to Mr. Derby, when he bought my lands, that he ought to pay $8,000 an acre for them that day; not that that was the market value, but that was what the lands were worth. Intrinsically, that day, they ought to have been selling for $8,000 an acre.

2 q. There is another statement there about betting on the park question. Is that true?

383 I didn't understand Mr. Kerfoot to mean that I was betting on the park question. I wasn't betting on the park question. I understood Mr. Kerfoot to mean that I was resting confidently on the park, and therefore refused to sell my lands.

Recross examination by Mr. McKinnon:

1 q. Did you own all of block 9 in Pryor and Hopkins' subdivision in 1867?

A. I didn't.

2 q. How much did you own in that block?

A. All but four lots and a half; that is, a little more than one acre less.

3 q. Give the number of acres you owned.

A. There was six and two-thirds acres in the *the* entire block, and I owned it all but about an acre, as near as I can come to it.

4 q. What did you realize for all you owned in block 9?

A. $23,000 for what I owned in the east half. What I owned in the west half I still own.

5 q. What is the value of what you still own in the west half to-day?

A. Well, I can hardly say. I don't know that I have formed a definite idea of the value.

6 q. Give your best impression.

A. Well, I should think it was worth from $60 to $70 a foot.

384 No, let me see; it would hardly be called worth sixty dollars a foot; say sixty dollars a foot.

7 q. How much would that be for the west half of block 9?

A. I don't know, unless I make an estimate.

8 q. Make an estimate, if you can, as to what it is worth.

A. I suppose it must be worth, from the sales I have seen in the papers—that is all I know about it—$55 to $60 a foot.

9 q. How much in all?

A. That I can't tell. I owned all of it, except 125 feet.

10 q. How many feet did you own entirely?

A. I don't know, unless I would sit down, and make an estimate. I think I owned 466 feet, which, at $60, would make about $27,960.

11 q. I will ask you to make another little estimate. How much have you realized in all out of blocks 7, 8, and 9, so far as you have sold the same since you offered those blocks to Mr. Derby for $24,000?

A. I think I said I thought I got $23,000 for block 9. I think it was $21,000. No, it was $23,000. I realized, in all, $134,914.

12 q. That leaves you still on hand about $27,000 worth of property, according to your estimate, in block 9?

385 Redirect examination by Mr. Hill:

1 q. Have you in your possession a letter which you received from Mr. Kerfoot in 1867, informing you of the Walker sale?

A. Yes.

2 q. Will you produce it?

A. I cannot find it at present, but I will look for it, and will attach it to my deposition as an exhibit.

Continuation of redirect examination of James W. Prior by Mr. Hill:

1 q. You desired to add to your answer to the 32nd interrogatory, Mr. Prior—speaking of what your agency consisted—speaking of Kerfoot & Co., having been you agents since their partnership.

The question is: In what did that agency consist? The answer is this: "They were my agents for anything that was done in connection with the property, paying taxes, & looking over it, & so on." You wished to make a correction?

A. I wish to add, "and the agents for the sale of the lands,
386 whenever I instructed them to sell any part or parcels; I instructed them from time to time to sell certain parcels. Sometimes they sold, & at other times, the lands which were thus placed in their hands to be sold were withdrawn. I put a parcel in their hands in 1868 to be sold at $40,000, which was withdrawn in a few days; I put a parcel in their hands in 1869 to be sold for $40,000, which was withdrawn in a few weeks; I put a parcel in their hands in the spring of 1870 to be sold for $10,000, which I withdrew some weeks ago. They had a general power to sell my lands, made in 1854, I think; but that was revoked by me in 1860. They never had any other general power, & no lands to sell from 1860 until the sale made in 1867 to Mr. Derby. There never was any agreement, special or otherwise, except the power revoked in 1860, that they should sell on any part of my lands apart from the implied agreement, or agreements, founded on the instructions given from time to time to sell part or parts of the land, but I always intended whenever I should offer any lands for sale, to do so through them, & I believe I never offered any lands through any other house, except on one occasion, & on that occasion I withdrew the lands in a very few days. The sales made to Mr. Derby were made upon direct application to me by Mr. Derby, when I was at home. Let me see.
387 Mr. Derby made three sales for me. The first he made by directly applying to me, & urging me to make the sale in July, 1868. The second was made by him in March, I think, 1869, when I was at home in New York. He applied to me directly to buy the property, & sold another parcel after in August, 1869. In that case, he made direct application to me for the property. I hadn't offerred him. Neither of those three sales were made on offers made by me to sell the land; that is, I didn't put them in his hands; I didn't offer them originally—put it in that form. I didn't offer the lands originally for sale.

Q. That is all, is it?

A. That is all, I believe.

Q. The 39th interrogatory, page 6, as to the delivery of your deed to W'm W. Derby, of date the 19th day of April, 1867; you desire to correct that. Your answer is: "I think the deed was made on the 19th day of April, although I am not certain about it; but that is my recollection that it was about the 19th of April, 1867.

A. And delivered on the 26th of April; that, I think, I wanted to add—having to be sent to New York, in the meantime, to be executed by my wife.

Q. The 44th interrogatory is, "Prior to that sale, had you received any offers for that land, or any part of it?" Your answer is,
388 "Yes." Then comes the question: "Please state what offers you had?" & answer, "In January, I think, or December, late in 1866 or early in 1867, I received a communication from a person in New York named McLean." You desire to correct that?

A. That is what I want to correct. Mr. McLean has written a letter in which he states, & I, therefore, state on information & belief—my confident belief, that that offer made by him was made on the 5th of March, 1867, in the city of New York.

Q. In the answer to the 67th interrogatory, on the 16th page, occurs

this statement: "I said $1,500 an acre. Mr. Derby declined taking them at that price. I then said to him: 'Suppose you make an offer!' He said he would not, & declined to do so." You desire to make an explanation here.

A. Yes, sir; I desired to say that when I asked him to make an offer, he said he would take time, and he would do so, but he would take time to do so; he would meet me in Mr. Kerfoot's office again.

Q. The 58th interrogatory, on page 17?

A. I may as well state it here now, while I think of it, that all the negotiations & conversations, everything relating to the sale, were commenced & were prosecuted, & ended in the office of Kerfoot & Co.

Q. 71 Dearborn st.?

389 A. I don't remember the number; it was in their office. I will state that the negotiations commenced on the 17th of April, & terminated on the 19th in the agreement to sell.

Q. The 58th interrogatory, page 17, in answer to "Who first introduced you to him?"—meaning Mr. Derby.

A. Mr. Kerfoot, in the office of Kerfoot & Co., introdueed me to him. In the office of Kerfoot & Co., after the negotiations commenced. I asked Mr. Kerfoot those questions that follow there.

Q. On the 18th page, near the top. Mr. Derby had proposed to put up some improvements. Asked Mr. Derby in reference to the improvements he proposed to put up, & he said they would amount to some $18,000 or $20,000. I wish to ask you further in regard to that, as to the meaning of the $18,000 or $20,000, whether it meant the sum total as to the matter of the improvements he did propose to put up.

A. I don't know as I can state exactly what he meant, but my understanding was, from what he said, that the buildings or improvements, which he proposed to put up would amount to about some $18,000 or $20,000.

Q. All told?

A. That was about all I can say; I should say all told; that was my impression.

Q. In answer to the 61st int.: "Do you remember any conver-

390 sation that you had with Mr. Kerfoot about the Walker sale?" You desired to add to your answer.

A. What did I answer?

Q. Your answer is this: "I can't say that I remember distinctly any particular language. Mr. Kerfoot said to me a good deal about it, but I really don't remember now anything special that was said."

A. Many conversations—I wish to add this now—took place between myself & Mr. Kerfoot & Mr. Derby; sometimes with Mr. Pierson, in which they tried to satisfy me that the Walker sale was a good one, & that the land was sold for its full value, & many about the value of my lands, in which they & I didn't agree. I founded my opinions of the value of the land in the fact that on the 28th day of June, 1866, Mr. Kerfoot wrote me a letter, in which he stated that the lands were worth perhaps $1,000 an acre, & on the fact that three several offers had been made to me of $1,500 per acre for the land, one for the entire parcel, & the other for a portion; two offers, one for one acre, & the other for 60 acres. And from the number of applications that had been made to me in New York by letters written from Chicago about my lands, I knew the value of them was steadily increasing, & I knew the lands were worth much more in March, 1867, than they were in June, 1866. I heard

391 frequent statements & arguments about the value of these lands addressed to me by these gentlemen, but said little in reply to

them, except to repeat that I knew my lands were worth more than $1,500 an acre, because that sum had been offered me for them, & by one party who stated that he would give more, if I would fix a higher price. Mr. Kerfoot asked me a number of times before the 15th of April if I had fixed a value on my lands. I replied I had not, having determined not to sell before the question should be settled. There was no reason for fixing any value. I made no special efforts in the year 1866 & in the year 1867 up to April, to learn the value of—the market value of—the lands, for the reason that I had determined not to sell them until the park question should be settled. I will make a statement: I don't know whether it will be admissible, Mr. McKinnon, or not—that the court will have to determine upon—it is an inference of mine. I think Mr. Kerfoot was anxious that I should sell some of my lands before the park vote has had. I believe that is all I want to say about that.

Q. At the 21st int: "Do you remember of riding down to see the land with Mr. Kerfoot about that time?"

A. I desire to make a correction of my answer. I can hardly say that I do remember having been down there with him more than once; but I suppose I have been.

Q. On the 27th page of your deposition, in your negotiations
392 with Mr. Derby, occurs this language, where you say, "I could well afford to lose $500 an acre on the lands I was selling to him, if it were necessary." Do you desire to explain?

A. It must be, "on the lands that I proposed to sell to him."

Q. The lands that you proposed to sell to him, if it were necessary—if by so doing he would put up the improvements. The words "if it were necessary" seem to require some explanation.

A. If it were neeessary, in order to secure improvements, that I could well afford to lose $500 an acre, if by so doing I could secure the erection of the improvements that he proposed to put up.

Q. In answer to the question near the top of the 13th page of your deposition, "Was you acquainted with many land agents in 1867?" you desire to make an addition to your answer?

A. I am going to state explicitly. I knew Sam'l H. Kerfoot & J. Ford Pierson, & I knew James H. Rees, who was once my agent, in partnership with Mr. Kerfoot. I don't remember to have seen Mr. Rees at all in the year 1867. I probably did see him, but I don't remember it. I knew W'm D. Kerfoot then, & Samuel Gehr, with both of whom I became acquainted many years before, while they were clerks in the
office of S. H. Kerfoot. I think I have seen W'm D. Kerfoot
393 but once since 1860. Once I saw him in the office of Mr. Derby for about a moment; the other time I saw him in his own office, & I stepped in & I don't remember that I staid long enough to sit down, I staid so short a time; simply saw him, having known him in his uncle's office. I don't remember to have had any other conversation with him about my land at all, & believe I had not. I have seen Samuel Gehr, to the best of my recollection, but once since 1860, & I think he then volunteered some information about the value of my land, but I am not certain, nor do I remember on what occasion it was. I knew Fred'c L. Fake at that time, whose acquaintance I formed in the banking house of a brother-in-law of mine in New York, when he was a clerk there. I believe he was not a real-estate agent in the spring of 1867, & I believe he was not in Chicago while I was here, but I am not certain; that is my impression. I have no impression about conversations with him; I have talked with him about the lands since, I know.

I know J. D. Harvey slightly; have received letters from him whilst I was in New York, in relation to my land, & I have been in his office once or twice, but not, I think, for more than 5 minutes at a time. I don't remember to have seen him at all in the spring of 1867,
394 though I may have seen him; that I am not certain about. I knew a young man named E. K. R. Armstrong, I believe his name is, or at all events his name is Armstrong; not a real-estate agent. I have seen him two or three times since 1860, but I don't remember on what occasions, & I don't know that he is in the city now. About somewhere between the 10th & 15th of April, 1867, I saw an article in one of the Chicago papers relating to the park question, signed by Geo. R. Clark, I think, who is a real-estate agent. I called to see him in relation to the park only, & not to learn his views of real estate at all, & don't remember to have asked him any question about it, though I may have done so, but he volunteered the opinion which I have already stated in my testimony; I believe I stated it before. He volunteered that opinion. He called to see me once at the hotel.

Q. The Sherman House?

A. At the Sherman House—at my hotel, & talked about the park matter. I don't remember, on that occasion, to have had any conversation about my property. I believe these are all the persons I knew at that time in Chicago, except persons whose acquaintance I had made many years before, on my visits here, but with whom the acquaintance had been dropped entirely. I certainly wasn't in anybody's office to learn the value of my lands, or to make an attempt to sell them,
395 & nobody, I believe, called to see me at the hotel while I was here, except Col. Clark, about the park, & Mr. Harvey. Mr. Harvey called once or twice at the hotel to see me on some of my visits to Chicago, but I am not able to identify the time. I believe these are all the persons I knew at that time in the city of Chicago when I came here.

Q. To the 76th interrogatory—to the answer you stated you desired to add something in regard to the park matter.

A. Yes, sir. It was proposed here in the city of Chicago, I believe early in the year 1866—in the spring of 1866, or early in the summer of that year—to establish a public park on the south side of the city. From the first proposition I believe, on the south side—real estate on the south side, & especially on the avenues on which my property lay, the streets & avenues, a large advance began at once, & a steady rise in the market value of that property from the first proposal for the park, until the spring of 1869—a steady and rapid advance in the value of real estate; that there never was any decline in any of that property within that two years, although there were palsies—occasional palsies in the advance, yet I believe there never was any decline, so that lands that Mr. Kerfoot in his letter of the 28th of June, 1866, estimated as worth $1,000, were sold in the spring & summer of 1869, at $13,300 an
396 acre. Hence I feel myself authorized to say that this steady & rapid advance did take place from the date of that letter, the 28th of June, 1866. Then I believe a large portion of this advance was caused by the proposal—the original proposal—for a park, & the subsequent establishment of the park.

Q. Cross-interrogatory No. 6, you desired to correct where you state "I should think it was worth from $60 to $70 a foot." You wish to alter that so as to make it $55?

A. Yes, sir; it is worth—sales a little above it, I see, have taken place, a little on the other side of the street, at $60; they did, at least,

a few weeks ago, & I understand on the east side the property was more valuable.

Q. The question in regard to the 11th cross-interrogatory: "I will you to make another little estimate. How much have you realized in all out of blocks 7, 8, & 9, so far as you have sold the same, since you offered these blocks to Mr. Derby for $24,000?" You wish to correct that $24,000 impression?

A. Yes, sir; I don't remember to have made the offer for $24,000. My recollection is that it was $25,000. I want to say that I paid Mr. Derby for making these sales of blocks 7 & 8 for me, more than $2,000 in commissions. I never made applications to him to sell the land for me. Each sale was originated in an application from him to buy the lands.

Q. Anything further you wish to state?

397 A. I think I did not ask Mr. Kerfoot the value of my lands before the sales in the spring—in April, 1867, because he had frequently expressed his opinion about the values when we were conversing about the Walker sale; that though I had determined not to sell any lands before the settlement of the park questions, I had not formed any determination, nor had I even thought of, as to what I would do if the park should be defeated, but as soon as the park was defeated—as soon as it was known that the parks were defeated, I immediately determined not to sell, but to go home immediately, until the negotiations were commenced, as stated in the former part of my deposition. I believe that is all I have to request in the way of correction for the purpose of having my testimony properly understood.

(Counsel for defendant here interposes an objection to all of the testimony—questions and answers—this day taken.)

Q. Will you please state when you purchased the W. ½ of the N. W. ¼ of section 3, town. 38, range 14 east?

A. I purchased the north 70 acres of that parcel, I think, on the 23rd of April, 1853.

Q. Please state what interest in that purchase Arthur F. Hopkins, of Mobile, had, & the relation between Judge Hopkins & yourself?

398 A. Judge Hopkins & myself had been most intimate & confidential friends for many years; he was my most intimate & confidential friend in the State of Alabama. At the time I made this purchase he had a little money in my hands to be invested at my discretion in Chicago lands. After buying that 70 acres I wrote him what I had done, & stated, I believe, that his interest in the land would be 13 acres. That is my recollection, 13 acres & a fraction. The year afterwards, I think it was, Judge Hopkins & I were here in the city of Chicago together, when he bought from me an interest of 10 acres more, & I believe I then conveyed to him 23⅓ acres, so as to be one undivided ⅓ of the 70 acres. So that he owned after that conveyance to him, ⅓ of the 70 acres. I have stated about the subdivisions, have I not?

Q. I wish to ask in regard to the circumstances of the subdivision?

A. I think this property was surveyed & subdivided into streets, blocks, & lots, in May, 1856. The survey was made by S. S. Greeley. The plan of the plat & subdivision was matter of consultation between Mr. Kerfoot, Mr. Greeley, & myself. The plat was acknowledged for record by me, in person, I believe, & by Mr. Kerfoot, as the attorney-in-fact; well, for my wife & for my mother, who had an interest in the south 10 acres of the 80-acre parcel, and I believe as attorney-in-fact, for Mr. Hopkins, although I am not certain about that. I think

399 on the 3rd of July, 1866, Judge Hopkins & I made, in the city

of New York, a deed of partition, by which he received—he took the E. ½ of block 1, and E. ½ of block 6, & the whole of blocks 4 & 5, & lots 1, 2, 23, 24, in block 12, & I took the residue of the 70 acres. That deed was acknowledged by us in the city of New York, & sent by me by mail to Mr. Kerfoot to be recorded. In the letter which I wrote I specified all or nearly all of my own lands, but didn't remember what I said specially about the Hopkins lands. I requested Mr. Kerfoot to send me the deed when recorded. In the letter I requested *to* him to write to Judge Hopkins, at White Sulphur Springs, Greenbrier County, Virginia. In a few weeks this deed, recorded, was returned to me at New York, by Mr. Kerfoot.

Q. Mr. Prior, from the purchase of *of* this land until the subdivision who had the active management of the land itself in Chicago as between yourself & the other owners?

A. As far as there was any management, I was; I directly managed affairs for them—that is, I indirectly—through me. Mr. Kerfoot was our Chicago agent to do what was needed here in the management of the property, but these parties usually consulted with me, & I acted in that way.

Q. Who paid the taxes?

A. I paid the taxes—Mr. Kerfoot paid the taxes through me on the lands—on all the lands.

400 Q. On all the lands?

A. Yes, sir.

Q. The partition was managed, do you say, by yourself & Mr. Kerfoot as attorney-in-fact, for all the other owners?

A. That is my recollection.

Q. From the partition until the death of Judge Hopkins who paid the taxes, & in what manner were the taxes paid on the entire——

A. By Mr. Kerfoot on all the lands owned by Judge Hopkins & myself, & land owned by three or four other friends of mine who had small parcels in the neighborhood.

Q. Did Judge Hopkins remit the money to you & you to Mr. Kerfoot?

A. Yes; he did.

Q. Until his death.

A. No, not until his death; after the occurrence of the war, all communication between the north & the south was suspended, & I then paid the taxes out of my own pocket; paid his taxes through the war for his benefit. Those advances have all been refunded to me by his executors, since.

Q. At the time of your sale in April, 1866, to Mr. Derby, you stated——

A. 1867.

Q. 1867, to Mr. Derby, you stated that you had no knowledge that Kerfoot & Co. had any interest in the sale by Mr. Walker—in the property sold by Mr. Walker?

401 A. I have not.

Q. You stated, further, that you had no intimation of that—of any interest of Kerfoot & Co., in the property until some time in 1868.

A. Yes.

Q. Please state how you learned that fact.

A. Well, in July, 1868, I spent that month in Chicago, & a person said to me that Kerfoot & Co. had an interest in the Walker purchase. It had been frequently intimated to me before that they had an interest in that purchase. Indeed, it had been directly stated to me before fre-

quently that they had an interest, but no special facts had ever been given until this occasion. When this person said that they had an interest, I replied that the statement was incredible; that I had heard these statements before, but that the statement was an incredible one—I didn't believe it. He said to me: If you will go to the records of the court, you will see it there. I went to the court—to the record, & there I read an instrument purporting to be made on the 19th of April, I think, by Mr. Derby, Mr. Kerfoot, & Mr. Pierson. That was the first intimation of any fact that had been communicated to me.

Q. During your intercourse with Mr. Kerfoot or Mr. Pierson, & Mr. Derby, did either or any of them, intimate to you that Kerfoot & Co. had any interest in the Walker property, or anything con-
402 cerning this agreement?

A. They never did, until this occasion I speak of, when I had a conversation with Mr. Derby about that agreement.

Q. About this agreement which——

A. Immediately after I saw it on record here, I saw Mr. Derby & had a conversation with him about it, but I am absolutely unable to state now how that conversation began.

Q. State it as near as you can remember.

A. I am not able to say how it began.

Q. State substantially what the conversation was, being careful to give exactly what Mr. Derby said, & what you said.

A. Mr. Derby said that there was such an instrument on record as I saw. How this conversation began between him & me, I am not able to give an impression, or how it started; but he said there was such an instrument on record, but that it had never been signed by him. I then asked him if he had ever authorized it to be signed by anybody else, or sanctioned it. He said he had never authorized it or sanctioned it; that it had been put upon the records there by Mr. Pierson, without his knowledge, & without the knowledge or consent of Mr. Kerfoot, who, I think he said, was at the time absent—abroad. That's about the amount, I think, the substance of the conversation. I asked him why
403 these men did such a thing; he said, to cast a cloud upon his title, & in order to get rid of that, he would be compelled to pay them something.

Q. Did you ever have any further conversation with him in regard to that?

A. I think not. I think I never have had any conversation with him about that since.

Q. Did you ever intimate the matter to either Mr. Kerfoot or Mr. Pierson?

A. Yes, sir; I intimated it to Mr. Pierson the other day.

Q. That's since the commencement of the suit?

A. Oh, yes; a few days ago.

Q. Prior to the commencement of the suit, did you have any conversation or information from Mr. Kerfoot or Mr. Pierson in regard to an interest in the Walker land?

A. No. I ought to state that Mr. Derby's statement to me about that instrument seemed plausible & reasonable, & that I—any suspicions I may have had before, were in a large degree allayed by what he said to me. I thought I detected in his conversation a good deal of feeling between him & Kerfoot & Co., or between him & Mr. Pierson, but I made no inquiries about it at all; it was a matter in which I had no interest, & I felt no interest, & I made no inquiries with a view to learn how

it was, how it originated, or why there was any feeling. I judged so from the fact that he spoke harshly of Mr. Pierson.

404 Q. When you were here in April, 1867, & at the time you sold a portion of your property to Mr. Derby, was there any intimation that Mr. Kerfoot & Mr. Pierson were to have any interest in that property?

A. In the property I sold?

Q. In the property you sold.

A. None; none whatever.

Q. Did you ever learn that they had any interest in that property?

A. Well, I learned from the records, that the day after my deed was delivered to Mr. Derby, a portion of the property which I sold to him had been conveyed to Mr. Pearson; that appears by the records. I didn't know that that conveyance to Mr. Pearson had been made, until last year.

(Counsel for def't here enters an objection to all of the foregoing testimony in behalf of the complainant, this day taken.

The witness here states that the foregoing testimony given by him this day, he deems essential to a fair exposition of his mind & thoughts when he gave the original testimony, so far as is explanatory of his previous testimony.

Counsel for the def't here states: "My objection is not to the form or manner in which the deposition has been taken; it is to the materiality of the questions & answers, & the form of the same.")

405 Cross-examination by Mr. McKinnon:

Q. What papers are those from which you have been reading, & giving your deposition to-day?

A. A memorandum made by me.

Q. Will you please produce, & attach the same to your deposition, as a part thereof.

A. I here produce them. (They are marked Exhibits B & C.)

Q. When did you prepare this memorandum?

A. I prepared it within the last two days.

Q. Where?

A. In my room.

Q. At what place?

A. The Sherman House.

Q. In this city?

A. Yes, sir.

Q. At the time you sold the 143 acres—

I will state here the reason why I prepared that. After having got through my testimony the other day, after stopping & examining the notes of the reporter afterwards, I discovered that there had been a number of omissions, which had escaped my memory at the time, & some other matters, that required some explanation to make my testimony clear, & therefore I prepared them, without suggestion or aid from any person whatever; nobody has ever seen them until this

406 moment, nor knew of them; without the aid of or suggestion of any one, without the knowledge of any one at all, I produce them here.

Q. At the time you sold the 143 acres to Mr. Derby, in April, 1867, was there a mortgage upon your lands?

A. Yes, sir.

Q. If so, what amount, & to whom?

A. The amount was $8,000; the actual amount, I think, was about $6,000; to Mary Akerley.

Q. When was that mortgage discharged?

A. Discharged in July, 1867, I think.

Q. After the sale?

A. Yes, sir.

Q. In your examination, I understood you to *to* say that you had very great confidence at all times & always in Chicago property. I will ask you if you didn't permit some 10 acres of land, which you had previously purchased, to be forfeited to John Wentworth?

A. Yes, sir; on Halsted st.

Q. Of whom, for whom, and by whom, was that land purchased?

A. That land was purchased by Judge Hopkins & myself, of John Wentworth, in April, 1854, I think.

Q. At what price?

A. $500 an acre.

Q. How was it to be paid for?

A. Paid on 10 years' time—9 years' time; $\frac{1}{10}$ cash & so on.

407 Q. $\frac{1}{10}$ cash?

A. Yes, sir.

Q. Who made the cash payment?

A. I made part of it; Judge Hopkins made part of it.

Q. Were any other payments made on the purchase?

A. Yes, sir, a good many payments; paid regularly down to the war.

Q. Who made the subsequent payments?

A. Subsequent from what time?

Q. Subsequent to the war?

A. Judge Hopkins & I made all the payments that were made on it.

Q. How many then, in all, were made; or how much was paid in all?

A. I don't remember now; it was paid down to the war.

Q. Down to the war?

A. When the war came on, Judge Hopkins couldn't give me any more money, & I was uncertain—I never had much confidence in property of that—when I speak of Chicago property, I mean emphatically property in my neighborhood; that is what I meant when I said Chicago property; that this property in that 10 acres I never had much opinion of, & when Judge Hopkins couldn't any longer contribute his portion, I declined to pay any more on it myself.

Q. Where was that 10 acres situate?

A. On Halsted st., I think.

Q. In what section, town, range, &c.?

408 I think it was section 33. I don't know the other—I don't know the township & range.

Q. On which side of Halsted st. was it?

A. I think it was on the east side.

Q. Then it lay between Halsted st. & the property which you sold to Mr. Derby?

A. No; it was a good deal north of that.

Q. It was nearer to the city than that?

A. Nearer to the city than that on Halsted st., which I understand to be a mile from State st. The westerly limits of my lands are on these avenues.

Q. How much nearer the city was it than the property you sold to Mr. Derby?

A. I suppose it was nearly a mile nearer—I should think.

Q. Will you please look at the map, & then state, if you can, where the property was situate exactly?

A. I believe it was the N. ½ of block 9, in section 33. I can't answer that question. I believe it was block 9, in section 33, on State st.—on Halsted st., not very far south of Archer avenue; that will identify it.

Q. Do you know what that property is now worth?

A. I do not.

Q. Give your best impression as to its value.

A. I have not any impression about it, except that it is very valuable now. I have that impression, that it is very valuable, but what the value is I have no idea whatever.

409 Q. How much was there due on it at the time of the forfeiture?

A. I don't remember; some $1,500 or $2,000; I don't remember. When I declined paying, however, I thought the lands were not worth $300 an acre.

Q. State, as nearly as you can, how much you had paid--you & Judge Hopkins.

A. I think it was $1,500 or $2,000; I am not sure which it was. It is a good while since I have looked at these things; it is an old matter that I haven't looked up for a long time.

Q. When was the forfeiture declared?

A. I don't know; I don't know anything about it.

Q. When did you quit paying?

A. I quit paying—I think the last payments were made in 1860. Before the next came along I think the war commenced. It was uncertain, then, whether Mr. Hopkins could contribute his portion; the whole thing looked very black, & I didn't care to own that little parcel of land in that form any longer. I will state, however, that as the war began to approach. in Dec., I think, of 1860, I made application to Mr. Hopkins—an earnest application to him—either to buy the land or sell it to me. I would have taken it from him, or I would sell it to him. I wished to sever our interests. I saw that war was impending, & that it was very desirable to have our interests separate. He declined to do anything, & I let the land go.

410 Q. How many acres were in the tract which you purchased of Mr. Wentworth, & which was forfeited?

A. It was 10, I think.

Q. You say that Mr. Derby stated to you that the improvements which he would have made, or which he had made, cost about $60,000?

A. I think so.

Q. Did he not tell you that they had cost more than $130,000?

A. I think not.

Q. Do you not know, as a matter of fact, that these improvements were commenced more than two years age, or about two years ago?

A. Buildings?

Q. Yes, sir.

A. No. I was here in July, 1868, & I was not here again until May, 1869, the houses were then in course of construction, but when they were begun I don't know.

Q. Then you can't say whether they were commenced about 2 years ago, or not?

A. No; yes. I think they were not commenced about 2 years ago, because I was here about 2 years; they were not commenced in July, 1868.

Q. Did you see about two wooden buildings, south of block 7, when you were here two years, or over two years ago?

A. On the Hopkins land, yes; I think I did.

Q. Then those were commenced?

411 A. Yes, sir; oh, yes. I thought you referred to the buildings up north. There were two houses that he built on block 12 in 1868.

Q. Were the blocks at that time fenced, or any trees set out?

A. Yes, sir; I think the blocks (4 or 5 blocks) fenced then, & trees set out in July, 1868. Those houses in block 12, however, were one-story houses, I think, & were small—quite small.

Q. You also say, that at the time that Mr. Derby was purchasing from you, that he remarked that he could sell property which he had purchased of Mr. Walker at an advance.

A. A good profit, he said.

Q. At a good profit?

A. Yes, sir.

Q. You are certain that he said that?

A. I am about as certain of it as we can be of any fact which rests in memory only. I certainly wouldn't swear to any fact that rests in my memory, as an absolute, certain, indisputable fact.

Q. Do you swear to that as a fact?

A. What?

Q. That he so told you at that time.

A. I swear to it that he told me, to the best of my recollection & memory, & I am persuaded that he did say so.

Q. Then it was a fact that he was then about purchasing from

412 you as cheaply as he could; will you please explain how it was that he should make such a remark to you on an occasion of that kind. What inducement would he have to state to you that his property had greatly increased in value, when he was trying, even then, to purchase of you, as he stated?

A. I was holding my property at about $1,500 an acre, & he paid, as I understood, about $800 an acre. I should have said that if he could sell his land at $1,000, $1,100, & $1,200 an acre, that would have been a good profit. I understood him to mean, if you want to know what my understanding of what he meant was, that he meant to operate on my mind to induce me to sell to him, & having discovered, as undoubtedly he had discovered, that I had much confidence in his ability to develop that property, & I think he mentioned that to me by way of a sort of coercion exercised over me to induce me to sell; that was my impression at the time.

Q. Now, since you undertake to explain at all, will you please explain how Mr. Derby could have made that assertion in consideration of the fact that you were offering to sell him another tract of your land, at about $1,200 an acre?

A. No; I was not offering to sell him any other tract then. I made no offers at that time.

Q. You offered to sell him the 18¾ acres?

A. Not then.

413 Q. Soon after?

A. After the other sale was completed. I stated the other day.

Q. May be you can explain. I understood you to say—

A. And then I didn't offer it to him, if my recollection is correct, at $1,250—if my estimate of the amount of land, & the prices at which I offered it is correct.

Q. I understood you to say, that the inducement which you had to make the sale of the 14¾ acres, was, that through the energy of Mr.

Derby, your other property would be enhanced in value from $500 to $1,000 an acre.

A. I said I had no definite idea of what the enhancement would be; but I stated, in my conversation with Mr. Kerfoot, that if such would be the result, I had a general idea that there would be a very material advancement in my remaining 30 acres; but as to what my idea was of it I don't exactly remember at the present time.

Q. Why then did you come to offer him the 18¾ acres at so low a price if your property was thereby enhanced in value?

A. It was just after the park was defeated, & I was very much depressed by that; & besides this I would have—in a very little while afterwards—I wouldn't have sold him that land at all.

Q. Where did this conversation take place with reference to all the sales that you made, or proposed to make, to Mr Derby?

414 A. Mr. Kerfoot's office.

Q. In Mr. Kerfoot's office?

A. Yes; I think that we had no conversation about it anywhere else.

Q. What brought you to Chicago at that time particularly?

A. I don't remember specially. I wanted to be here at the park vote. I think that was perhaps the leading motive that brought me here.

Q. Didn't you come here to dispose of a portion of your land?

A. Not at all—not definitely.

Q. Wasn't that one reason which brought you here?

A. I thought that I might possibly sell some while I was here, but I had no fixed motive to do it.

Q. You desired to do it, did you not?

A. I can't say I did, because I refused utterly to sell anything before the park vote was taken.

Q. If you had been offered $1,500 an acre or more for your lands, how did it come that you sold 14¾ acres at a great deal less price, & then offered to sell 18¾ acres at still less price?

A. This was immediately after the defeat of the park, & I was a good deal depressed by the defeat of the park, or felt it very sensibly at least, & to tell the truth I was a good deal disgusted, & for a little while I was very much annoyed & disconcerted.

Q. I understood you to say that when you made the sale to

415 Mr. Derby, you told him that you regarded the lands then as worth $8,000 an acre?

A. Intrinsically.

Q. Intrinsically. Now, if the lands were worth intrinsically $8,000 an acre, & you so believed, as you swear you did, how did you come to sell for less than you had been offerred before you came from New York, & still offerred afterwards to sell them for still less?

A. I had no idea when the intrinsic value would be developed, I had been waiting for it for a long time, & there had been no development, & I had no idea how much longer I should have to wait.

Q. When you were here in 1867—in April, 1867, after the defeat of the park, do you remember going with Mr. Derby, on W. Madison st., to look at any lands?

A. Yes.

Q. For what purpose?

A. His purpose was to get me to take it in exhange for some of my lands.

Q. That was the object for which you went there?

A. That was the object, as I understood from him.

Q. Was there any other object which you had?

A. I told him before I went there that I wouldn't take the lands, & I had no object in going, except simply to satisfy him.

Q. Did you at that time, or about that time, see Mr. Lancaster here—the gentleman with whom you had correspondence in New York?

A. Yes; saw him the day after the defeat of the park.

Q. It was the same man whom you met in New York?

416 A. I had never seen him in New York—I had; yes.

Q. The same man?

A. The same man to whose office I referred in New York.

Q. In Wall st.?

A. Yes.

Q. Did you ever sell any land to a Mr. Towne, a gentleman who kept or keeps the City Hotel in Chicago?

A. Yes. I may say about Mr. Lancaster, that I met him the day after the park was defeated; met him on the street, & I think I didn't stop with him two minutes; that was the only time, I think, I saw him afterwards. I believe I saw him before the park election, too.

Q. This Mr. Lancaster, whom you met here the morning or day after the defeat of the park, is the same man whom you saw in New York, & who made you the $1,500 & more, of an offer—through whose office you got it?

A. Yes.

Q. The same man?

A. The same man.

Q. Then why did you not find those men who had made you that $1,500 offer, & were willing to pay more than that, through Mr. Lancaster?

A. Mr. Lancaster said the next morning that his men didn't care to make an offer; I met him on the street. He stated that, & that was the end of it.

Q. Then it was that you concluded to take less?

417 A. No, it was not; I didn't conclude to take less then.

Q. How did Mr. Lancaster come to make that statement to you, that his men would not make an offer?

A. I think he said because the park had been defeated, or since this election—something of that kind. His precise words I don't remember, but that was my understanding.

Q. Did you ask him to make an offer, or whether his men were still ready to purchase?

A. I don't think I did; I don't remember now, whether I asked him whether his men were ready to purchase or not.

Q. How did he come to make that statement to you?

A. I don't remember. I may have asked him some question; I don't remember. I saw him but a moment or two, on the street, I think.

Q. If you did ask him, state why you did so.

A. If I did, it must have been because I wanted to know what they would give then.

Q. You desired to make a sale?

A. I can hardly say whether I desired to make a sale or not; perhaps I did. This was after the defeat of the park.

Q. What price did you sell the land to Mr. Towne at?

A. I sold it to him, I think, at $1,000 an acre.

Q. What?

A. $1,000 an acre, I think; that was in the year 1857, I think.

Q. What became of those lands?

A. He has most of them.

Q. Didn't you forfeit?

418 A. He has the most of them, I suppose. I don't know anything about the title, since, except of one acre; I took one acre back from him.

Q. How much did you sell him?

A. 4 acres.

Q. You took one back?

A. Yes, sir.

Q. How did you come to do so?

A. I was out here in 1858 or 1859, & one of his payments became due, & he complained of the hardship of the bargain, & I said to him, "I will take some of that land back from you; give you your option, pay the money now, or let me have one acre, I will take the acre at $500; I don't ask you, but I will take it, if you choose, instead of the money.

Q. That was the same land that you sold him at $1,000?

A. Yes.

Q. Did you ever sell any of your lands to S. C. Hall, or any other party?

A. I sold some to S. C. Hall—block 9—the whole of the lot, I think.

Q. Did you have to take that back?

A. Yes, sir.

Q. At what price did you sell that?

A. At $1,000.

Q. An acre?

A. Yes.

Q. When did you have to take it back?

A. I think I took it back in 1860.

419 How much had they paid to you?

A. I think he paid $1,500.

Q. On the purchase?

A. Yes.

Q. How much did you sell him?

A. That block.

Q. How much was in the block?

A. I think I sold—no, I sold him, I think, a block for $6,000.

Q. And after he had paid $1,500 on it, you took it back?

A. Yes, sir.

Q. Did you pay him back the $1,500?

A. No.

Q. You retained that?

A. I let him keep some of the lots, out of which he has made a good deal more than that, since. I didn't take all the land back; we made an agreement by which I let him retain a portion of the lots, on which he has made more, & he had resold, I think, all the lands to other parties, who had paid him considerable sums of money. Now, what took place between him & them, I don't know.

Q. Were there any other parties that you sold to, & had to take it back?

A. I don't remember, now; I don't recollect any one else. If you know of any, & will ask me, I will recall it, perhaps.

Q. You were at Mr. Derby's office a good deal before the park election, were you not, in 1867?

A. No; I never was in Mr. Derby's office at all, I think,

420 until after the election. I don't think I was in his office on that occasion, at all.

Q. Did you have any conversation with him before the park election, or anything to say to him?

A. I saw him in Mr. Kerfoot's office, sometimes 2 or 3 times a day.

Q. Did you go to the voting place with him?

A. Yes; on election day we went to one or two voting places.

Q. You went with Mr. Derby to the voting places, during the election?

A. To one or two places in the afternoon, I think—one on Wells st. I don't remember to have gone anywhere else.

Q. Have you had any correspondence with the plaintiff in this suit, or any of them, since the commencement of the suit?

A. I have with Mr. Walker.

Q. With Mr. Walker?

A. Yes, sir.

Q. Have you any of his letters constituting that correspondence?

A. I must have some at home.

Q. Have you any here?

A. I am not certain whether I have any here or not; I am not certain about that.

Q. What was the nature of the correspondence?

A. The only fact that I remember he wrote me particularly was one *inquirg* as to the evidence that could be furnished of Mr. Kerfoot's agency for Judge Hopkins, in his lifetime. He wrote to me to
421 inquire what proofs could be furnished on that point.

Q. What relation, if any, was Judge Hopkins, or his family, to you, or your family?

A. None.

Q. Your family nor his were in no wise related?

A. Not at all.

Q. Previous to the commencement of this suit you had no interest in it with Mr. Hopkins, or his heirs; had you?

A. Oh, no; no.

Q. How did you come to take such an interest in this matter, in view of that fact?

A. How do you mean? State the facts that show the interest I have taken.

Q. In writing to him, & having him write to you in regard to this suit.

A. I always answer all letters written to me, invariably, I believe, civilly & satisfactorily, if I can.

Q. Did you meet Mr. Walker here at any time, & Mr. Manning, his attorney, here at any time since the commencement of this?

A. Met them here last May.

Q. How did you come to meet them at that time?

A. They came to the hotel while I was here.

Q. Did you understand in any way that they were to be here, prior to your coming?

A. I don't recollect whether I did or not.

Q. Give your best recollection in regard to the fact.

A. I don't remember; I learned very soon after I came here
422 that they were expected.

Q. What other business did you have here at that time, if that were not your business here, to meet those parties?

A. I had been out here once a year regularly for the last three or four years, to look after my lands here.

Q. Last year when you met them here?

A. I don't know that anything special beside that brought me here.

Q. Why did you come here on this occasion?

A. I decline stating that. I don't see that you have the right to ask that question, & I shall not answer it.

Q. Didn't a commission issue out of the court in this case to take your deposition before you came here?

A. Yes, sir.

Q. Why did you not give your deposition to that commission?

A. My health was very bad; I was in bed much of the time when that first came on there, & I intended very soon, as I began to get better, to come out here, & I supposed it would really make no difference if my testimony were taken here; that it would be quite as satisfactory to you, if you had the opportunity of cross-examining, as otherwise; but for some time after that commission arrived there, I was in bed three or four times a day, frequently; really was quite sick.

Q. When you met Mr. Manning & Mr. Walker here last summer did you have any conversation in regard to this suit?

423 A. Yes; a good deal.

Q. What was your conversation, & where was it had?

A. Had at the Sherman House.

Q. State what conversation you had in regard to it.

A. I cannot state any special conversation now, we had about it; I don't remember any particular thing.

Q. Have you had many conversations with the plaintiff's attorneys in regard to this matter?

A. I think I talked frequently with Mr. Hill about it.

Q. Have you made any suggestions to Mr. Hill, Mr. Walker, or Mr. Manning, or any other one representing or interested on behalf of the plaintiffs in this suit, in regard to its management, or how it should be originally prepared?

A. I don't know as I have had any in regard to how it should have originally been prepared; I have made a great many suggestions in regard to the conduct of the suit—about its management—legal points.

Q. Have you made any suggestions, or did you make any criticisms on the bill itself?

A. Perhaps I did; I am not certain about that; perhaps I did make some criticisms on it.

Q. Will you please state what criticisms you made, or what suggestions you made in regard to it?

A. I don't think that I remember now with sufficient correctness, to state particularly what suggestions I made; I say I made a great many suggestions.

Q. How long since you made these suggestions or criticisms?

424 . I haven't seen any of the complainants, I think, since last May—yes, I saw Mr. Walker a few minutes in New York, last summer—last fall.

Q. Your memory is tolerably good, is it not, Mr. Prior?

A. Reasonably good.

(Counsel for the complainant here enters an objection to all of the testimony regarding the counsel or advice as privileged communications.)

Q. Since your memory is so good concerning all the other facts to which you have testified, why is it you are not able to state anything with regard to the conversation which you had by way of suggestion in this suit?

A. Because the points you ask about now are not definite & distinct

facts relative to the business transaction; that is the reason why I can't tell.

Q. Did you remark to the counsel, or to the complainant, Mr. Walker, or to any of the complainants, that you regretted that the bill had been filed before you saw it?

A. Perhaps I did.

Q. Perhaps you did! How is the fact?

A. I think it likely I said so.

Q. Now will you be kind enough to explain why you made that remark?

A. Because I thought I could have made a suggestion to them that would have enabled them to frame their bill a little better than it was framed.

Q. Since you have no interest in this matter & are in no wise related to the complainants, & have no interest in the property whatever,

425 how do you come to take such an interest in their suit?

A. Because Judge Hopkins was my old & particular friend, & these children of his were my friends, & I feel a great interest in them.

Q. That is the only explanation you can give?

A. That is the only explanation I can give of the matter; I have no interest—no pecuniary or monied interest, of any kind whatever, in the suit.

Q. I understand you to decline to answer why you came here at the present time?

A. Yes, sir.

Q. In the early part of your testimony-in-chief, I understood you to state that you received many offers for your land, but made no offers to sell. Now, is it not a fact that you were in the habit of receiving offers without making any?

A. No. I don't think I said I had received many offers; I received many applications; the offers, I think, were confined to three.

Q. Confined to three?

A. I think so; though there may have been other offers made; I have a vague impression that some land agents here wrote me & offered me something else at the same time, but I don't remember particularly; I don't remember the name of the agents, even, if it was done; I can't swear that it was done.

Q. How is it as to the fact concerning which I ask you; are you not in the habit of receiving offers without making any at all?

426 A. Oh, yes; yes.

Q. That is your habit?

A. I can't say it's a habit, exactly. Parties apply to me for my lands, if my lands are for sale. I say they are not in the market, & I don't offer. If you choose to make an offer, do so, & the offer you make we will treat it civilly.

Q. How did you purchase the land from Mr. Wentworth? I wish to ascertain whether you had a deed or contract for it.

A. A contract.

Q. Did he have your notes, or simply your agreement?

A. Nothing but that agreement.

Q. State whether he threatened to sue you for failing to make the payments.

A. I don't think he did.

Q. He has never written you to that effect?

A. I think not.

Q. Why did you not come here from New York from 1860 to 1866?

A. Because lands were excessively dull, & I could see nothing. I didn't propose to sell. I thought things were very quiet—very flat; & I didn't care to add to the cost of the land the expense of coming to Chicago without any views whatever. That is about all, I think.

Q. I understand you to say you got some letters from Mr. Harvey; be kind enough to state when you received those letters.

A. I can't give any dates at all—anything about it.

427 Q. Have you the letters with you?

A. No; I have not.

Q. Before coming here, didn't you expect to give your testimony here in this case?

A. Did I?

Q. Yes, sir.

A. Yes; I did.

Q. Was that the reason why you carried these letters of Mr Kerfoot with you?

A. No; that was not the reason.

Q. Why did you bring them here?

A. I shall not state that.

Q. You shall not state that?

A. No. I may state, however, that I may have thought it would be used.

Q. Why did you not bring your other correspondence in regard to these lands with you?

A. Mr. Kerfoot had been my agent.

Q. Was that the reason why you didn't bring all the other correspondence with you?

A. And was in this suit.

Q. Is that the only other reason you can give why you didn't bring the other correspondence you had with parties in regard to these lands?

A. I couldn't possibly conceive that the correspondence with any other parties would have been of any use to me here whatever in my testimony, or in any other way.

Q. What do you mean by the expression, "use to you in this testimony?"

428 A. In any matter whatever—any of my own business.

Q. Will you explain how this letter is of any use to you—this letter of Mr. Kerfoot's, dated March 20th, 1867?

A. That is a letter written by my agent, to which I attach some value.

Q. Are not all the other letters of your agent of equally as much value in regard to this property?

A. No; they are not all.

Q. They are not all of as much value in this suit?

A. Not as much value to me. Many of them it would be impossible to conceive any use that could be made of them.

Q. Can you tell why this letter could be of any value to you in your own personal business?

A. No; I shall not state that.

Q. You shall not state that?

A. No.

Q. Do you know where John J. Walker, the complainant, now is?

A. I do not.

Q. Do you know whether he is here or not?

A. I do not.

Q. Do you expect to meet him here, or do you expect him here?

A. I think I do not—no, I do not, I know.

Q. I wan't to find out definitely what you received for blocks 7, 8, & 9.

A. I couldn't state that any more definitely than I stated it the other day.

429 Q. It seems to be somewhat indefinitely stated, & I would like to have you state it over, if you please.

A. You want to know at what the sales were made?

Q. Yes; at what the sales were made.

A. I believe it was $134,914.

Q. That is, less the land which you have on hand—less the value of the land which you have on hand unsold?

A. Yes, sir.

Q. How much do you value the whole at by adding the value of the land you have on hand?

A. I suppose that lands I have left there are worth from $25,000 to $27,000; $160,000, I should think.

Q. The total?

A. Yes, sir.

Q. That is the total?

A. Yes.

Q. Who said to you first that Kerfoot & Co. had an interest with Mr. Derby in the lands? You have stated that a person told you so here in the city; please state who that was.

A. Now, I should do that with great reluctance—not for myself at all. I think I shall have to decline that. If the court should decide that it ought to be, I will let you know before the suit is tried.

Q. I will now ask the question in another form. Who was the party whom you say told you that Kerfoot & Co. had an interest in the

430 Hopkins lands with Mr. Derby?

A. I say that is the question I think I shall have to decline answering; but I say now that if the court should decide that the question ought to have been answered, I will let you know; & I presume the other side wouldn't object to the fact being given. If I—to my—with my crude notions of the law, it looks as if that was immaterial.

Q. Can you give any reason why you decline answering that question?

A. Yes; I don't want to let it be known who it was that took that interest in the matter. That is the only reason. So far as I am concerned, I don't care a straw about it.

(Counsel for defendant now gives notice to counsel for complainant that he will insist upon an answer to the question in controversy if this testimony is to be used.)

The WITNESS: It is immaterial to me, you know, whether I answer it or not, but I would much prefer not exposing; while, if it is necessary to be done, it must be done, of course. A great many disagreeable things have to be done in this world.

(Counsel for the complainant here states to the witness: "Perhaps you better answer it.")

A. Well, Mr. Loomis, of Loomis, Potwin & Smith, told me.

Q. I understand you, in speaking of the Halsted-st. property to

431 say that your confidence was in Michigan-av. property?

A. In southern property, east of State st.

Q. If you had so much confidence in Chicago land, or Michigan-av. property, why did you tell Kerfoot & Co. to dispose of the property you bought or took of Mr. Derby, in exchange for the 14¾ acres?

A. That was inside property, & I had no desire to hold any inside property.

Q. What is your best information as to the value of that property that you took from Mr. Derby, at the present time?

A. I know nothing about it now, except what Mr. Derby tells me; he says it is worth $400 a foot.

Q. Have you any reason to believe it is worth much less?

A. I have no reason to believe anything else than that he told me correctly.

Redirect examination by Mr. Hill:

Q. You say you were here in May, 1869. At that time were there not some negotiations pending between you & Mr. Derby as to the partition of the lands in the N. E. ¼ of section 4, owned by Mr. Akerly?

A. I don't remember now—oh, yes—no, not between me & Mr. Derby. Mr. Akerly, who is a particular friend of mine, & who invested it out there on my suggestion, owned an individual interest in the 20 acres lying in the N. E. corner of section 4, township 38, range 14, &
432 after Mr. Derby sold his undivided interest in that parcel of about 20 acres, there were a number of negotiations between the parties who bought from him, & myself, as the friend & agent of Mr. Akerly, for a severance of their interests, for a partition of this land.

Q. Wasn't that your purpose here, mainly?

A. That took a good deal of my time while I was here, & I came out partly on that. I have forgotton before that was partly what brought me here.

Q. Is it not a fact, that on your arrival here, a telegram was sent from here to Mr. Walker, announcing that you were here?

A. Yes, so I was informed; you told me that you had sent that telegram to him.

Q. Was there any preconcerted arrangement between you & Mr. Walker & Mr. Manning, to meet them here?

A. Not as I remember; there could not have been, or he would have written to inquire whether I was here. I have no recollection that there was any arrangement by which we were to meet here.

Cross-examination resumed by Mr. McKinnon:

Q. If you had no particular business here in 1869, of your own, how did you come to call on Mr. Hill, the plaintiff's counsel in this suit, in regard to this suit?

A. I had seen Mr. Walker in New York not a great while before, & he asked me when I came to Chicago, if I should come here, to see Mr. Hill; I think that it is the way I came to see him. Mr. Walker
433 was in New York not a great while before that.

Q. Was that the first occasion you had to call on Mr. Hill?

A. That was the first occasion.

Q. The first time you saw him at all, was it?

A. Yes, sir.

Q. Was that the occasion when you remarked you regretted the bill had been filed before you saw it?

A. I don't remember that.

Q. Did you learn from Mr. Walker, the complainant, that he had some lands, or bought some lands, or took some in exchange from the defendant Mr. Derby?

A. I think I did.

Q. Do you know where they were situate?

A. No, except they were on the west side, I think.

Q. Do you know, from anything Mr. Walker has told you, or his counsel, whether those lands have enhanced in value?

A. I don't remember ever to have heard his counsel speak of them. I heard Mr. Walker speak of them, & I think it was his impression they had advanced in value, but how much, or to what extent, I have no idea.

Q. How did you come to have the conversation with Mr. Loomis, to which you refer—the Mr. Loomis of Loomis, Potwin & Smith?

A. I don't remember now, particularly.

Q. Was Mr. Loomis negotiating with you for a purchase of some of your lands, or a sale of them?

A. I think not.

434 Q. Did he ever negotiate with you for either the sale or the purchase of any portion of your lands?

A. I think not; I put a block of lands in their hands to sell at one time. I left it there a few days. If you call that a negotiation, why, that would be a negotiation, but I think that is the only——

Q. Where did you first see Mr. Smith of that firm?

A. In Mr. Kerfoot's office.

Q. What was he doing there when you knew him?

A. I think he was a clerk there, or cashier; at all events, that was where I knew him.

Q. Do you know how he came to leave there?

A. I do not; I never heard. I think I ought not to have stated who told me that. I don't see the materiality of that at all. I think I ought not to have stated it.

J. W. PRYOR.

435 Cross-examination of Mr. Pryor resumed by Mr McKinnon:

Q. Mr. Pryor, how did it happen that Kerfoot & Company were unable to sell the 183¾ acres for you at $25,000?

A. How did it happen? I never authorized them to sell it? I made the offer which I stated the other day, and, as I remember, it wasn't accepted, and that was the end of the matter; but very soon after that I wouldn't have sold out at a very much higher price; a few months after that Mr. Derby applied to me to let him have this land at $1,800 an acre, and I refused to sell—or a part of them in October, 1867—and I refused to sell them at that price. I refused to negotiate for them on any terms under $2,500 an acre. I said to him when he wrote to me he was going there, and would like to buy some of the land. I met him in New York. He talked about the land, and he said he hoped I would sell it at $1,800. I said I wouldn't negotiate on any terms under $2,500.

(Answer objected to by Mr. McKinnon, so far as the same is not responsive to the question.)

Q. I understood you to say that you wrote to the complainant Mr. J. J. Walker, saying that he sold too cheap, and disturbed his

436 mind by writing that you had been offered $1,500 for those lands.

A. I wrote to him that I had been offered $1,500 for the lands. I don't think that I wrote to him that he had sold his lands too cheap.

Q. You didn't write to him that he had sold his land too cheap?

A. Not that I remember.

Q. What did you mean by the term confounded in the letter which you wrote to him?

A. The letter of the 28th of June, 1866, written to me by Mr. Kerfoot; the offers which had been made to me.

Q. What did you mean by the term confounded in the letter which you wrote to him?

. The offer to me by Mr. McLean of 1,500 an acre, and numerous applications that had been made to me about the lands by parties in Chicago, had all persuaded me that my lands and the Walker lands were worth at least $1,500 an acre, and when I received a letter from my agent telling me that the Walker lands had been sold at about $800 an acre, I was very much confounded to learn that lands which I supposed were worth $1,500 an acre had been sold at about $800; that is what I meant.

Q. Did you write what you have here stated to Mr. Walker, or substantially what you have stated?

A. I don't remember, now, about that particularly. I can't state specially.

Q. State as near as you can what you did write, after receiving
437 Mr. Kerfoot's letter informing you that he had succeeded in selling Mr. Walker's land or the Hopkins estate?

A. I wrote to him, stating, I believe—of course I am giving this on my recollection, which is the best I can do—I believe I wrote to him stating that I had received this letter from Mr. Kerfoot, and giving, briefly, the contents of that letter of Mr. Kerfoot's, and I think I stated—confounded, I believe is the word. I don't pretend to say that exactly, I believe I then said I was confounded by this information, and I believe I then stated to him the offers that had been made to me, and that is as far as I can pretend to state, I think, what the contents of the letter were. I think I wrote to him expecting to get from him some explanation of this sale that had excited my surprise, but I don't remember just now, I couldn't say, with any confidence, that I wrote upon any other special matter.

Q. Did you in that letter advise him you had been offered $1,500 an acre for your lands, and more?

A. I think I did; that is my recollection.

Q. That was before you came to Chicago, and after you had received the letter from Mr. Kerfoot?

A. Yes, sir.

Q. Now, when you advised him that you had been offered $1,500 an acre for all of your land, did you really advise him truly. Did you have such an offer in point of fact?

A. I had an offer for sixty acres of land—I must state here
438 that at the time, it had been so long since I had looked over these lands that I had quite forgotten the quantity of land which I had there, and I had a vague impression that I owned sixty acres. but when I saw this person, Mr. McLane, I think I said to him I had about sixty acres there. He has refreshed my memory, and states that he had made an offer of $1,500 to me, and this I state as my recollection that he told me that for my sixty acres that I and he understood at the time.

Q. Now, when you advised him that you had been offered $1,500 an acre for all your land, did you really advise him truly. Did you have such an offer in point of fact?

A. I did have.

Q. From whom did you have that offer of $1,500 and more per acre for all of your lands?

A. From Mr. McLane.

Q. Who is he?

A. An agent of Mr. Lancaster's, at least he is in Mr. Lancaster's office. I don't know any more about it, except that he was in Mr. Lancaster's office, and I came there and I supposed he was a clerk. I don't know anything about his position there whatever.

Q. Did Mr. Lancaster ever make you any such offer?
A. He never did, that I remember.
Q. When you came to Chicago and found that the park measure had been defeated, and had offered your lands at less than $1,300 an acre to Mr. Derby, and had sold him some at considerably less than
439 $1,300 an acre, did you take the trouble then to advise Mr. Walker of that fact?
A. I don't think I did.
Q. Why didn't you do so?
A. I didn't see any occasion for it. I didn't see any necessity for it.
Q. You didn't.
A. No, sir; I didn't see what way it would affect Mr. Walker or myself.
Q. Why didn't you see as much necessity for advising him of what you knew to be a fact, as to advise him of what you didn't know to be a fact previously, and disturb his mind in regard to the sale which he had made to Mr. Derby?
A. I wrote to him because my mind was very much disturbed in regard to the lands. While the park matter was pending, I knew there was great demand for these lands. By getting a letter informing me that Mr. Walker's lands had been sold at about $800 an acre, when I knew they were worth more than that—when I had been led to suppose all along they were worth a great deal more than that, my mind was greatly disturbed when I got that. I wrote to Mr. Walker what I have stated, thinking Mr. Walker might be able to furnish me with some information why these lands had been sold at such low rates.
Q. In your direct examination a few days ago, you swore posi-
440 tively that you didn't know what these lands were worth, either your own or those of Mr. Hopkins, and you now swear that you did know positively *that you did know* they were worth a great deal more than the price for which Mr. Walker sold them. Will you please explain that?
A. I say now that I didn't know when I came out to Chicago, and after I came out here, what was the fair market price of those lands, but I knew they were worth a good deal more than $800 an acre; that I knew, but what was the fair market value I didn't know.
Q. Having advised Mr. Walker that you had been offered $1,500 an acre for the lands, and then having come to Chicago, and then having found out where the property you owned was, and after Mr. Lancaster made that offer to you and you wouldn't take it at all, why didn't you advise Mr. Walker of that fact?
A. I didn't see Mr. Lancaster about taking this land until the park question was settled. I didn't offer them to him; I didn't know Mr. Lancaster in the matter; I had never seen Mr. Lancaster, or dealt with Mr. Lancaster. He said to me that Mr. Lancaster was in Chicago and that he would write to Chicago and get the offers from Chicago. He received the offers that were sent to me, and I declined the offers, when I came out here two or three times before the park matter was settled—because I had settled in my own mind to do nothing at
441 all—nothing whatever with my lands until the park question was settled.
Q. You said on yesterday, in answer to questions asked you, that you saw Mr. Lancaster after the vote upon the park, and he then told you his parties would not touch the lands; would not buy the lands, or make an offer therefor?
A. Which time did I say?

Q. I understood you to say in April, 1867.

A. Well, whatever I said yesterday, I now state that Mr. Lancaster, as I remember, made me no offer, and I made him no offer of any description before the park matter was settled. The day after the park matter was settled I met him on the street, and he said his parties now would not make any offer. That is all that ever took place between Mr. Lancaster and myself in regard to that affair.

Q. If you were not negotiating or trying to sell those lands, why did Mr. Lancaster make that remark to you?

A. I don't know. I am sure this offer had been made, coming through Mr. Lancaster's office, before the park matter was settled.

Q. If it be a fact that you were not desirous of selling your lands, and didn't wish to sell them, as you have stated, how then did it come that Mr. Lancaster said to you that his parties would not take the lands, or make any offers therefor?

A. I met him on the street, and asked him his views on the
442 park matter. My views were a good deal modified by the park election; I didn't feel the same confidence in the affair then, and I wanted to learn how the public mind was affected by this thing, as well as my own.

Q. You say that Mr. Clark told you, previous to the vote upon the park, that your lands were worth $2,000 an acre at least; why didn't you sell to him?

A. I didn't say that; I said from $1,500 to $2,000.

Q. Why didn't you sell to him at $1,500?

A. Because I had refused to sell to anybody before the park matter was settled; he didn't make any offer. I didn't go to him to sell the lands. I only wanted to see him about the park matter, and he made those remarks about my lands. There was no attempt at negotiation; I made no offers to him nor he to me.

Q. You say that Mr. Clark said to you that if the vote was favorable to the park your lands would be worth $4,000?

A. Yes.

Q. Whether it was voted favorably or not, didn't you think them worth $1,500 an acre?

A. As I understood.

Q. Then why didn't you sell them to him?

A. I repeat it again that I didn't offer them to him, nor did he make any offers to me. I have stated a great many times, and I repeat it in the most emphatic manner, that I refused to sell the lands, or to
443 negotiate with anybody for them before the park matter was settled. I didn't see him after the park matter was settled that I know of.

Q. If it be true that you didn't desire to sell your lands at all, and that you did not seek a purchaser for them before the park matter was settled, why did you go to see Mr. Lancaster?

A. I didn't go to see him; I met him accidentally on the street.

Q. Why did you ask him the question you have stated?

A. I hardly remember now how the matter began between us, but he said to me—I don't remember what I said to him at all—he said to me that his parties would not make any offer.

Q. When you had determined to sell your lands, after the park vote had been taken, why did you become so determined to make the sale to Mr. Derby.

A. I didn't determine to sell them. My first idea, after the park matter was settled, was to go home. I stated that to Mr. Derby and

Mr. Kerfoot, and Mr. Derby commenced using arguments and statements which I have given in a previous portion of my deposition, and the result of this conversation was the sale. I didn't offer them to anybody else, and hadn't determined to do so, and didn't offer them to anybody else.

Q. Had you any idea that you could sell them to anybody else?

A. I don't remember that I had any idea about that matter particularly. I became very desirous, after what occurred between Mr. Derby, Mr. Kerfoot, and myself.

444 Q. Did you have reason to believe that you could have sold them to anybody else than Mr. Derby?

A. I can't say that I had. Mr. Kerfoot didn't mention to me anybody else's name. He suggested nobody else's name, and told me nobody who would be likely to buy, and if he had, I think I should have been willing to sell Mr. Derby the lands at less than I could have got from other persons, in consideration of his being the best man in the city to buy, on account of the improvements he proposed to put up.

Q. Didn't Mr. Derby, in point of fact, prove to be the best purchaser you could find at that time?

A. I don't know that fact.

Q. Did you find any one better?

A. I didn't find any other person.

Q. You didn't find any other purchaser?

A. No, he was the only one I found; he was the only one that Mr. Kerfoot suggested to me, or that I saw.

Q. Now, sir, when you made this sale to Mr. Derby, it was a great deal less than $1,500 an acre, and when, after that sale, you had offered your 18¾ acres to him for $25,000, which was also less than $1,500 an acre, why didn't you advise Mr. Walker of that fact, so as to disabuse his mind of the fact that you had previously advised him that the lands were worth $1,500 an acre?

A. Well, when I sold these lands to him, I sold them at about $1,400 an acre. I thought I was selling them, when I sold them for less

445 than they [were] worth, in consideration of getting Mr. Derby in there. That is what I thought. On Mr. Derby's representations as to the value of the Michigan-avenue lot, I didn't expect to lose $1,750 there, and upon Mr. Kerfoot's representations I didn't expect to lose that money then at all. Then these 18¾ acres were a quarter of a mile south of my other lands, and were then worth a great deal less money, and, I suppose, are to-day worth less money. I offered them that day at $1,200 or at $1,340 an acre—those southerly lands.

Q. Do you swear that the 18¾ tract is a quarter of a mile south of the 14 acres which you sold to Mr. Derby?

A. That is my understanding. I believe they are a quarter of a mile south.

Q. We have a map of the lands here in the office; look at the same, and state whether it exceeds a quarter of a mile.

A. The average distance is a quarter of a mile south. I don't care about maps.

Q. How many blocks distance is it between the tract which you sold to Mr. Derby, and the tract which you offered him?

A. One block.

Q. How many feet in that block; how many feet long is that block between those two tracts of land?

A. 591 feet, without the streets—about a quarter of a mile. When I

speak about the distance, I don't undertake to speak exactly, but about a quarter of a mile.

Q. When you came to Chicago and had remained there until
446 after the park vote had been taken, you were aware of the fact that before going you advised Mr. Walker that your lands were worth $1,500 an acre, and had received such an offer for them, and more?

A. Yes.

Q. And after the vote upon the park you were well satisfied that you could not sell them for that price, and that you had offered them for a less price, why didn't you then advise Mr. Walker of that fact, so as to disabuse his mind of the belief that he had sold his lands too cheaply from the fact that you had been offered $1,500 an acre for yours—when you had so previously written?

A. I don't think that I had thought of Mr. Walker in any way in connection with the matter, whatever, at the time or afterwards, for a long time; and I thought, myself, the lands, temporarily, would be depressed after the defeat of the park, so that when I wrote to Mr. Walker about it, the park matter was pending and operating with full power upon the market value of the property.

Q. After the vote had been taken you became satisfied in your own mind that you were mistaken as to the value of those lands—didn't you?

A. Not as to the market value.

Q. After the park vote had been taken?

A. No, sir; pending the time until the vote was taken, I don't think I was mistaken in the value, at all.

Q. After the vote was taken didn't you become satisfied that you were mistaken as to the value of the lands?

A. No. I can't say that I became satisfied at all, because, with-
447 out seeing other people immediately after the defeat, the very morning it was known, the negotiation between Mr. Derby and myself commenced, and I thought without seeing anybody else or talking about the matter. The matter was so presented by him and Mr. Kerfoot to me that I was rather desirous of selling to him—of getting him interested there. I don't remember seeing any one else about it. I had an impression, however—I should say now, that I had an impression that the park matter might temporarily have a depression.

Q. Yes; you had an impression.

A. Wait a moment. I swear that it would have temporarily—my memory on that point is refreshed by the fact that I examined a letter which I had written to my wife about that time stating that this thing might produce a temporary depression, but that I had no idea it would produce a permanent effect. My memory is refreshed on that point.

Q. Isn't it a fact that the park question itself caused a temporary excitement and activity in the price of the lands previous to the vote thereof?

A. Well, I wasn't here myself from December, 1866, and in that month—that time when I was here, I was sick all the time and was scarcely ever out of the house, so I am not prepared to speak of the state of public feeling any more than what I have already stated. The park matter I have always understood had a good deal of influence in the matter, and the fact is, I formed the opinion that the lands would be depressed by the defeat of the park, and I formed, as I believe now, and state, a most erroneous opinion, for the lands have steadily advanced from
448 that time on.

Q. Did the lands decrease any more by the defeat of the park than they increased by its inception?

A. I believe the market value of the property did not decline a particle from the defeat of the park; that is my impression.

Q. Why then did you sell your 14½ acres of land for about $1,400 an acre?

A. Because Mr. Kerfoot and Mr. Derby had both taken great pains to impress upon me the almost necessity of my selling some of those lands to somebody who would take an active interest in developing the neighborhood. Mr. Derby stated then to me what he was going to do in the neighborhood, and Mr. Kerfoot said that he had no doubt he would do all these things.

Q. Did you require Mr. Derby to put that statement in writing?

A. No, sir.

Q. Why didn't you do so?

A. The thing did appear to me to be so perfectly arranged between themselves that it was immensely to Mr. Derby's advantage to put those buildings up, owning this large interest, that it really didn't occur to me that it would be necessary for him to put that in writing.

Q. If the reasons you have given were the real reasons why you sold Mr. Derby that 14¾ acres at the price you did sell, why did you afterwards offer him the 18¾ acres at a good deal less than what you say you had been offered for the entire property.

449 A. Well, the defeat of the park, as I stated, I feared would have a temporary effect upon the market value of the property, but in that I think I was mistaken. These lands which I offered south then were not worth near as much as the more northerly lands.

. If the reasons which you have given are the correct reasons, why did you want to *logne* 18¾ acres on Mr. Derby at a still lower rate, if you had received the benefits which you anticipated from the sale to Mr. Derby?

A. Well, a man's mind, as he is going along in traffic and trade, sometimes changes a little; his views are not precisely alike as he proceeds, and when Mr. Derby asked me what I would take for those lands, I hadn't previously thought about selling them at all. It occurred to me "well, I have owned this land a good while, and that is a clever little sum of money, and perhaps I will sell them." That is about the best explanation I can give; I made no offer to sell them to anybody else.

Q. That was the only opportunity you had to realize the fact?

A. What fact?

Q. To realize on those lands.

A. I think I had an offer to sell 60 acres on the 5th of March, 1867, if I would accept it.

Q. How do you know it was a bona fide offer?

A. I didn't say it was a bona fide offer.

Q. Why do you say you had the offer?

A. I believed it was a bona fide offer.

450 Q. Why did you state that there were 23 acres of the Hopkins land in Pryor and Hopkins' subdivision when you knew there were only 21 acres?

A. I didn't state that Judge Hopkins owned 23 acres out of the subdivision. That was before the partition was made between us—before the partition deed was made. My recollection is, that Judge Hopkins owned 23⅓ acres of that 70 acres. When the deed of partition was made between us on the third of July, 1856, we made partitions of these lands with some other one or two outside unsettled matters between Judge

Hopkins and myself. I don't remember about that. In the partition he got these three blocks and those four lots.

Q. How much land was there in the three blocks and those four lots?

A. I should think there were about 21 acres. That is my recollection. My statement of the 23 acres was as to his undivided interest before he made the partition.

Q. You are quite familiar with the lands?

A. Yes, sir.

Q. And always have been?

A. I can't say I have always been. I certainly was not familiar with them when I thought I had 60 acres when I had 45. It was so many years since anything was said about the lands that I had forgotten about the lands—who owned the several portions of the lands. I had to look at maps before I could determine, and at the deeds. Since
451 that the lands have been the subject of a great deal of canvassing, and I now know very well where my lands lie.

Q. Why did you desire to carry the idea that Mr. Derby only paid $800 for the land in Pryor and Hopkins' subdivision?

A. I haven't expressed a desire of that sort, nor do I desire that now. When I speak of $800 I speak in reference to the Kerfoot letter of March 20th, 1867, when he set it about $800 an acre.

Q. Why did you, on yesterday, contrast these 20 acres of land, which Mr. Derby bought of the Hopkins estate, with your lands, and in the same connection say that Mr. Derby bought those 23 acres at $800 an acre?

A. If I stated that he bought them at $800 an acre, I stated it through a mistake. When I speak of the $800 I refer the $800 to that letter of Mr. Kerfoot's.

Q. Since you are somewhat familiar with the price of this land, will you state what, in your opinion, was the actual value of the Hopkins land on the west side of State street at the time that Mr. Derby purchased the same?

A. I have no idea.

Q. As compared with the land on the east side of State street?

A. I have no idea how they *they* stood comparatively in the market at that time. I had been here but once for six years; more than
452 six years; and I had no interest in the west-side lands whatever.

Q. There can be no mistake of the fact that you informed Mr. Walker that you had been offerred $1,500 an acre for your land while you were in New York?

A. I think not; I think I did.

Q. You subsequently found out that you were mistaken as to the value thereof from the fact that you sold and offerred to sell them at a much less rate.

A. No, I didn't find out. I was mistaken about the value until the park matter was settled.

Q. You are certainly mistaken as to what you could get for them, because you offerred them for a much less rate?

A. That is your statement.

Q. How is yours?

A. I have just made one.

Q. Now just please state whether you are not mistaken or not?

A. Well, I really don't know. I made no other offer to sell my lands to anybody, except to Mr. Derby. I made no inquiries as to the value outside of Mr. Kerfoot's office. I am not able to say.

Q. You are quite sure, though, that you could have sold the lands to

the New York party, at the price you have stated, after the defeat of the park?

A. No, I am not.

Q. Could you have sold them to him?

453 A. I don't know anything about it. I only tell you what I know that Mr. Lancaster said. We didn't agree to make any offer then. That is all I know about it.

Q. Now, sir, have you ever disabused Mr. Walker's mind as to the fact which you wrote him from New York?

A. What fact?

Q. That the lands were worth $1,500 an acre.

A. I don't believe I have ever stated to Mr. Walker that I thought these lands were worth less than $1,500 before the park matter was settled.

Q. Afterwards?

A. That I have never stated to Mr. Walker that these lands were worth, in my judgment, not less than $1,500 before the park matter was settled, or while that was pending.

Q. Did you ever state, at any time, to Mr. Walker, in writing or otherwise, the fact that you had sold your lands for less than $1,500 an acre?

A. Yes, I stated that to Mr. Walker.

Q. Did you also state to him, or have you also stated to him that you offerred to sell the 18¾ acres at a still less price?

A. I don't remember about that. I think I did. I have a strong impression I mentioned that to him.

Q. Did you also state to him that you were unable to sell them at that price to the party to whom you offerred them?

A. I don't know that I said that I was unable. I believe I said

454 that I had offerred them. I know I still owned the lands.

Q. Did you state that you had offerred them to Mr. Derby and he declined to take them at that price?

A. I don't remember of anything further than that. I had forgotten the matter, that I had ever made it to Mr. Walker until you asked me the question. Now I believe I did.

Q. You still persist in saying that Mr. Derby, while refusing to buy the 18¾ acres, at about $1,300 an acre, told you he could sell the Walker lands, which he had purchased, at a good profit of over $1,000 an acre?

A. Yes, sir; I certainly do. In that statement he said he would sell them—if I didn't sell my lands for enough to justify him in making the improvements—he would sell the Walker lands, get out of it, and get a good profit out of them.

Q. You know F. H. Winston, of this city?

A. Yes, sir.

Q. Before the sale which you made to Mr. Derby of the 14¾ acres, did you have any conversation with Mr. Winston in regard to the value of those lands?

A. I don't remember now.

Q. Give us your best impression and recollection.

A. Well my impression or recollection is, that I had no conversation with him, though I have no strong impression about it.

Q. Are you at all acquainted with Mr. Winston?

A. Well, I know him now pretty well.

455 Q. Were you at the time, or about the time, that you sold those lands to Mr. Derby?

A. I think I saw Mr. Winston—I must have seen Mr. Winston in December, I think, 1866, when I was there to collect some money from the

Stock Yard Company, I think, through Mr. Winston. I saw him in that way, and I don't think I saw him in 1867 at all. I don't remember.

Q. I understand you to say that Judge Hopkins had been a long life friend of yours?

A. Yes, sir.

Q. If that be so, how did it happen that, in the partition of the lands between you and him, you beat the judge, who was your particular friend, out of the Michigan avenue frontage, except one front?

A. I didn't beat the judge. I stated before there were other little matters between me and the judge; but I don't recollect what they were. It was all taken into consideration on that settlement.

Q. Now isn't it a fact that you beat the judge out of all the frontage on Michigan avenue, except one block?

A. You may call it what you please. He owned twenty acres, and I and my friends owned sixty acres. Judge Hopkins owned twenty acres, owned an eighth of a mile on Michigan avenue. Myself and my wife owned three-eight's of a mile, as I remember. Judge Hopkins had twenty acres in the eighty-acre parcel.

Q. Well, sir, ought he not, in that case, to have had two Michigan avenue fronts?

456 A. That may be a matter of argument.

Q. How many fronts on Michigan avenue did he have, in point of fact?

A. Two; no, one.

Q. How many did you have?

A. I had—I don't remember now; I had two, I think, in block 1. Judge Hopkins and myself made the partition in New York, with the map before us.

Q. Well, how many fronts did you have on Michigan avenue, in that subdivision?

A. I must have had seven, I think.

Q. And the judge had only one?

A. Yes, sir. I proposed——

Q. You made that division so that the judge should take State street, Wabash avenue, and Indiana avenue fronts?

A. No, sir.

Q. Well, you took the Michigan avenue fronts?

A. I didn't make him take anything; he took voluntarily. It was a matter of debate and argument between us. He was as well posted in the value of Michigan avenue property as I was. He had been out here twice with me, and had heard my views about the whole matter, thoroughly.

Q. He somewhat rested on your knowledge of the fact, didn't he?

A. I don't know that he did.

Q. If he was a man of ordinary sense, why didn't he select more

457 than one front on Michigan avenue, while you had seven?

A. I don't remember about that. I can't say the particulars of the reasons why this parcel was selected, or the other.

Q. Had he been out here as often as you had?

A. No, sir.

Q. You knew more about property than he did?

A. Perhaps so; yes. I had been here more frequently than he had.

Q. Isn't that the reason why you selected seven Michigan avenue fronts, while he only got one?

A. No, sir. I absolutely never thought of the fact until you presented it to me here, that I had seven Michigan avenue fronts. I never

thought of that thing before in my life; I aver that positively. I have dealt with Mr. Hopkins in the only way I can deal with a friend of mine, and I carried through, and I saved his lands five years through the war for him.

Q. You think it was perfectly fair to give him one front on Michigan avenue, while you had seven, and to set him over on State street, Wabash avenue, and Indiana avenue?

A. We settled on terms that were mutually satisfactory, and which each party thought were fair.

Q. State, if you know, how J. J. Walker come to be styled major?

A. I don't.

Q. What business was he engaged in from 1860 to 1867, as far as you know, by information or otherwise?

A. I don't know. I think he was in the rebel army part of the time; how long I don't know. He would perhaps, carry on the busi-
458 ness of commission merchant in Mobile, which he has been doing for many years; his house might have been continued.

Q. State what his position was in the rebel army during the war, if you know.

A. I think he was—I cannot recall what the term is; I don't remember now what the name is. I have a pretty good idea; it was the duty of furnishing the supplies, I think, for the army—what is the term?

Q. He was your friend during that time, wasn't he?

A. We never saw each other all that time, or never corresponded all that time.

Q. You have stated in your testimony that the Hopkins' heirs are your friends?

A. I said they are now. He is my friend now; that is, I am on very friendly terms with him.

Q. If you were never acquainted with him previous to the death of Arthur F. Hopkins, how does he now become your friend?

A. I have been well acquainted with him since 1840.

Q. With J. J. Walker?

A. Yes, sir; I believe I got acquainted with him in 1840. I think I can recall the occasion on which we first met.

Q. When you were out here in 1867, were you not advocating the park question to some extent?

A. Well, I spoke in favor of the park when I talked with people about it. I suppose you would call it advocating the park. I was friendly to the park measure—very friendly.

Q. Didn't you know there were several persons here who had
459 clubbed together for the purpose of carrying that park question if possible in the courts or otherwise?

A. I didn't

Q. You never knew that fact?

A. No.

Q. Didn't you know previous to the vote on the park, that there were several persons here who had clubbed together to carry the measure through?

A. I didn't.

Q. Never heard of it?

A. I think not.

Q. Didn't you at that time know that Mr. Derby's office was headquarters for those who were in favor of the park measure?

A. I didn't. I think I was not in Mr. Derby's office on that visit at all. I believe I didn't know he had an office, even.

Q. Isn't it a fact that you have been doing business with Mr. Derby ever since you commenced agitating this suit against him?

A. I never commenced agitating this suit against him.

Q. If you never commenced agitating this suit against him, how did it come that you were so solicitous in regard to the form of the bill before it was filed or afterwards?

A. I don't know that I was very solicitous, but I made the suggestions that I have stated; that I thought the bill might have been framed a little better if I had seen the parties before it was framed.

Q. You are not practising law now?

460 A. No.

Q. If you were not solicitous in regard to that, how did it come that you were desirous of seeing the bill before it was filed?

A. Well, I thought if my friends had been wronged in the way it was stated, I would be glad to see them righted.

Q. Did you believe that they had been wronged?

A. Well, I believe I did.

Q. How did it happen, if you believed that fact, that you still continued to do business with Mr. Derby?

A. I think I did no business with Mr. Derby, except at his solicitation. I offered him no business and I did no business with him.

Q. Haven't you trusted valuable papers in his hands, and haven't you sent him notes and mortgages of great value?

A. Well, I will answer that if you want it, but I could put the whole thing so it would be more satisfactory to you.

Q. Any way, sir.

A. I can state that Mr. Derby has made sales for me; he has sent me considerable sums of money after making the sales, and has managed the notes and mortgages, and so forth, and sent them to me. If that is a satisfactory answer, it covers it all.

Q. You have been quite friendly, calling on him, and riding out with him, all this time?

A. Yes, sir.

Q. Still you say you had some strong feelings against him on account of this matter?

461 A. I didn't say I had strong feelings against him. I had none against him.

Q. You are trying to agitate this suit against him?

A. No, sir; never. I never intimated to Mr. Walker what I learned from Mr. Loomis, nor to anybody else.

Q. Did you ever advise Mr. Derby of your real intentions or opinions in the matter?

A. I think I never did.

Q. Why didn't you do so?

A. I didn't care to have any debates with Mr. Derby; the matter was a consummated matter. I thought it was ended, and I didn't care to have any debates with Mr. Derby about the matter; debates about other people's affairs are not what I care to take an interest in.

Q. If you did not care to have any debate with Mr. Derby about the matter, and if you had no real interest in the matter, how did it come that you took such an interest on the part of the complainants?

A. Because, as I state now, that they were all old friends of mine, and I thought they were wronged.

Q. What reason had you to believe that they were wronged?

A. On account of that instrument which I mentioned.

Q. What instrument?

A. That agreement of the 19th of March, between Mr. Derby and Mr. Kerfoot.

Q. Don't you think Mr. Derby had a right to sell to Mr. Kerfoot property which he bought and paid for?

A. I don't know; that is a matter of opinion.

Q. Well, what is your opinion about it?

462 . My opinion is that when the agency of Mr. Kerfoot was completely and finally ended, and there was nothing else whatever for Mr. Kerfoot to do, that if Mr. Kerfoot concluded to buy any of that property he should have informed him that he did want to buy, and then he would have a right to sell it.

Q. I will ask you one more question—how did it come that you are still carrying on the idea that you are friendly to Mr. Derby, when, in fact, you were playing a sort of detective all the while against him?

A. I deny that, that I am playing detective. Mr. Derby can't say a thing I did. I never asked him a question with a view to develop anything. I said to Mr. Walker when I was here last May with him, "Now, Walker." because I was familiar with him, "I am very friendly with you, and also with Mr. Derby; I give you notice that I will not tell you a thing I learn from Mr. Derby, and just as certainly I will not tell Mr. Derby what I may learn from you, and you can't expect to get anything from me to give to Mr. Derby."

Q. Has Mr. Derby always dealt fairly with you?

A. Do you want an answer to that?

Q. Yes.

A. I think not; I think in the sale of block 7 he dealt very unfairly with me—in block 7.

Q. Well, let us hear how?

A. You want to hear about that, do you?

Q. Yes.

(Mr. Hill, of counsel for plaintiff, objected to this as not being

463 a proper subject of cross-examination.)

Q. Well, I will want an answer to that.

Adjourned until Monday at 10 a. m.

464 In reference to the answer on the 24th page, I say that he could sell at a good profit. I don't remember anything being said about $1,000.

465 In reference to the answer at the bottom of page 24, I certainly did not mean to say anything about an arrangement between them, for I knew nothing of any arrangement. It was so obviously to Mr. Derby's to put up these buildings that it didn't occur to me to be necessary to require him to put anything of the kind on paper.

466 EXHIBIT C.

Many talks, before I sold, with Kerfoot, D. & P. about the W. sale, in which they tried to satisfy me that W. sale was a good one, and that land sold for value; and many about the value of my lands, in which they and I did not agree. I founded my opinion on the offers that had been to me, and on the fact that K. wrote me 28 June, 1866, that my lands were worth, perhaps, $1,000 per acre. I knew that their market value at the time of these talks was much more than in June, 1866.

I heard all statements & arguments, and replied to them that these

offers had been to me. Kerfoot asked me several times before 16 April if I had fixed a value on my lands. I replied I had not, having determined not to sell, there was no reason for fixing value.

I know Derby & Kerfoot were very desirous for me to sell.

Made no special efforts to learn value of the lands 1866 & 1867.

Acquaintance in Chicago, Loomis, Rees, W. D. Kerfoot, S. H. Gehr; F. L. Fake not real-estate agent at that time, I think; J. D. Harvey and Kerfoot's office, &c. Armstrong not real-estate agent.

Extremely difficult to get at values. Publication of sales.

Paid D. more than $2,000 commission. Never asked him to sell lands for me.

Except to Rice; he importuned me frequently to sell.

Park proposed 1866.

All negotiations, writings, &c., took place in office of K. & P.

467 EXHIBIT "A."

S. H. KERFOOT. J. H. PIERSON.

OFFICE OF S. H. KERFOOT & CO.,
REAL ESTATE AND LOAN BROKERS,
Chicago, M'ch 20, 1867.

J. W. PRYOR, Esq.,
Box 3928, *P. O., New York.*

D'R SIR: We are glad to know that you really purpose coming to Chicago to stay awhile, for by so doing you will be better able to judge as to what you had better do touching y'r property.

Major Walker left last evening for Mobile, having disposed of the interest of the estate of Judge Hopkins for 25,600—about $800 per acre in bulk. A very good sale to one person—fair, including the undivided half of the 20 acres owned with S. W. Akerly.

The purchaser of the latter interest desires a partition. One by agreement will be better than by law.

The park, we fear, will be defeated. It has to be voted upon by the people. At any rate the location depends upon the decision of the commissioners yet to be appointed. The prospect of the park will probably be as good as the probabilities to sell property by.

Some here are prophesying a crash, but we do not think it is coming yet awhile.

Truly, &c.,

S. H. KERFOOT & CO.

468 EXHIBIT "B."

I did not ask Kerfoot & Co. about value, because in their defence of the Walker sale I had their views frequently expressed, and, therefore, did not directly ask them for their judgment as to the value.

Determined not to sell before 16 April, but had settled *no or* opinion as to whether to sell afterwards or not. As soon as vote was had determined not to sell, but to go home at once; but what D. & K. said induced me to sell.

Agents & for sale of lands whenever I instructed them to sell any particular parcel or parcels; did this from time to time.

They had a general power to sell my lands made in 1854, '5, '6, I believe, but that was revoked by me in Dec., 1860, I think. They never had any other special power—no lands to sell from 1860 until the sale,

April, 1867. There never was any agreement, special or otherwise, except the power revoked in 1860, that they should sell all or any part of my lands apart from the implied agreement or agreements founded on the instructions given from to them to sell part or parts of the land.

But I always intended, whenever I should offer my lands for sale, to do so through K. & Co., & I believe I never offered any lands through any other house except once, & withdrew that very soon. All the sales made by me, apart from these offers, were made on the direct application of parties to me.

469 WALKER ET AL.
v.
DERBY ET AL.

Deposition of Ja's W. Pryor.

Close of cross-examination, M'ch 22.

470 Continuation of cross-examination of Pryor:

TUESDAY, *March 22nd*, 1870.

Q. Has Mr. Derby always dealt fairly with you?

A. No.

Q. Well, let's hear how.

A. Well, early in July, 1868, about the 3rd of the month, I think, I came to Chicago, & very soon after that saw Mr. Derby, & whether he mentioned what I am now about to state the first time I saw him or not, I don't remember; but certainly, very soon after I arrived in Chicago, he stated to me that he had a plan by which he wished me to sell a block of my land to two members of the board of public works. I think he said that the board of public works was made up of three members; one from the west side, one from the north side, & one from the south; that the west side & the north side felt the superiority or ascendency of the south; were very jealous of it, & generally in the conduct of affairs of the board of public works the western & the northern members united, & overruled the southern member; that if we could get two members of the board of public works interested in our land down there, that after that we would have fair play; that, in the matter of laying out water-pipes, gas-pipes, & street improvements, & so on, we should have a fair show. I think he said, perhaps, or, at all events, that was the idea—an equal chance with the other two sides. The idea, as I understood it,
471 was that the south side was rather overruled in these matters by the other two members, & that he was desirous of getting those parties interested there simply with a view to have justice done. I didn't understand him to say it in any degree—nor did he wish to have any improper influence exercised over them, or that they would do anything that was improper. I came out here for the purpose of remaining an indefinite time; as long as I might deem it expedient, to look after my property, growing in value, & becoming quite important indeed; &, being a person of entire leisure at home, I resolved to remain here as long as might be necessary to enable me to form a definite opinion as to the value of my lands, the prospects of the future, & so on. I saw Mr. Derby frequently. I don't think I saw him every day, but I certainly saw him very often. I think that every time I saw him he urged those views upon me very strongly, stating that it was important to get those parties in; &, after awhile, he said that he was afraid these parties would

abandon the idea unless I came to some conclusion. After awhile I met two of those gentlemen in this office—Mr. Derby's office—I say two of those gentlemen; they were introduced to me as Mr. McArthur, I think, & Mr. Carter. We had some conversation about the matter. I don't remember anything that Mr. McArthur said specially, but I think Mr. Carter stated to me that he owned some houses on the west side. Mr. Derby had previously stated that fact to me, which he might exchange for some of my lands. I said to Mr. Derby, when he mentioned it to me, that I would not take anything on the west side on any
472 terms. I said the same thing to Mr. Carter, but Mr. Carter rather urged me to ride with him to look at the property, & I said I would go & look at it. I rode with him, saw the houses, & repeated what I say. I think I stated I had as much land or real estate in Chicago, or the neighborhood, as I desired to own. In the first place, I didn't want any more property anywhere; & in the next place, I wouldn't have it on the west side on any terms. I wouldn't look at it at all; had always refused to do so. I don't know how long a time this thing continued, but it must have been a good while, I think, because I was here, I think, some two or three weeks before I could come to any conclusion about the value of my lands. I may as well here state that I have always found it a matter of extreme difficulty to get at the value of my lands here by asking parties what they were worth; that it seemed that so many men were interested in one way & another in not presenting the thing exactly as it was; that I found great difficulty. I believe I came here on this occasion with the predetermination not to ask anybody about the value of the land, but to wait until I could get at the facts, which would satisfy me as to the value. I remained here, as I have stated, waiting, until after awhile I learned in some way that Mr. Winston, I think Frederick H. Winston, had sold some land, which, I believe, he informed me in this office he had sold at $4,300 an acre. His lands, as I understood, were an average distance—a good deal more
473 than a half a mile south of my lands; at all events, they were considerably south of my lands. About the same time, I think, as near as I can remember now—of course these are mere impressions—I saw in the papers that what is called the Ellis tract, lying directly north of Egan avenue, had been sold at $7,500 an acre. Putting these two sales together, I concluded that my lands were worth about $6,000 an acre. That was my judgment from these two sales.

By Mr. Hill:

Allow me to ask when this was, Mr. Pryor?

A. This was in July, 1868. When I mentioned to Mr. Derby that my lands were worth about $6,000 an acre, he said I was above the market; that after a while I might get that price, but at present the price was above the market, & when I mentioned the Ellis sale & the Winston sale, I understood Mr. Derby very distinctly to disparage both of them by intimating that there was something about them; it wasn't exactly as it seemed on the surface. I asked no special questions, & I may possibly have misconstrued him; but that was my clear understanding. But I said that I would not take Mr. Carter's land at all on any terms. He then said that he could not buy, & I believe Mr. McArthur said that he had not any money to buy, & nothing grew out of that. I don't remember how often I saw Mr. McArthur. I can't say that I saw him but once; I am not certain about that point. I
474 know I saw Mr. Carter twice, & how many more times I can't speak; but I am only certain about these two. When this

matter fell through, Mr. Derby said immediately—when I say immediately, I understand that it was as soon as it was known that they would not; he then said, "Well, I have another plan by which I will get those people interested down here, because it is very important to you & to me both to have them." Says he, "I have a friend to whom I want you to sell this block; & if you sell that block to him, I will sell." I am not certain whether he said a block of lands, or what; but, "I will sell to those two gentlemen; I am not afraid to take those west-side houses." Of course I don't pretend to give the very identical language, but that was the substance. Well, I said that I would sell my lands for $40,000. He still insisted that I was above the market; and then, as I understood, for I didn't see Mr. Fargo—Mr. Cha's Fargo—for some time, a negotiation commenced with Mr. Fargo, as I understood, between Mr. Derby & from him, about these lands. I met Mr. Fargo & another gentleman—I am not certain; I think his name was Field—in Mr. Derby's office, I believe. Mr. Field declined to consider the matter at all, & Mr. Fargo—I don't remember at all what was said between us in the mattor—but he declined buying. I remember to have made a proposition to him, which he received as if he would have accepted it, but
475 Mr. Derby immediately interfered & intimated that it was not a business affair, & perhaps it was not a business affair. It was this: that if you will let me have the option of taking this land at a certain price—I don't remember the price—within a certain time, I will let you have it to-day at a price very much beneath what I am asking; what that price was I don't remember either. At that point Mr. Derby interfered & broke it up. I can't say what would have come from it. Mr. Fargo, I think, said, "Well, that sounds reasonable," or, "that all sounds like business," or something of the kind. Now, Mr. Derby's motive for interfering, it may have been that he thought it was not a practical business-like way of doing the thing; perhaps it was not. It would have been highly satisfactory to me, though I don't remember then how the matter went along, but Mr. Derby was most urgent; almost implored me to sell to Mr. Fargo. He said that Mr. Fargo was a particular friend of his; that he was a man of means; that if he got the block of land he would hold it out of the market, & that any moneys that might be needed at any time—& frequently occasions arose for the use of money in the neighborhood—Mr. Fargo would be ready to contribute his share; that he would like to have him in there for that reason, & that he would sell a block to the other parties. I asked him why he didn't sell a block of his own land at once to the gentleman. He said,
"I dare not sell. If it were known that Derby were selling his
476 land down here, it would create a panic in the whole neighborhood, & it is necessary for somebody else to set a sale so as to give a sort of tone to the thing before I sell." Well, that looked rather plausible, & I don't know how much more of conversations or negotiations took place, but I saw Mr. Derby. I was very dilatory about the matter. I remember I was very unwilling to let my lands go for less than $40,000, because I was satisfied that, if they were in the market a short time, I would get that; but the great urgency of Mr. Derby—it seemed as if there were some special matter; I couldn't help feeling that there was something that I hadn't got hold of that made it expedient to sell—to sell to Mr. Fargo. The result of the matter was that the lands were sold to Mr. Fargo for $27 a foot, which makes $31,914, I believe, for the block. Very soon after the sale was made—almost immediately, indeed, a gentleman asked me, who was looking for lands to build on down there, as he said, if I would take $32 a foot for half of

that block, (block 7,) & I declined it. I don't remember whether I told him I had sold it or not, but I declined the offer. I saw Mr. Derby very soon after, & I said to him, "Now I have just been offered $32 a foot for this land." Mr. Derby said, "Well, I don't care," said he. I replied, "I do care." I knew very well that he didn't mean that he was indifferent to what I got. I didn't understand him to mean that.

He says, "You know I don't mean that. I mean that the sale to
477 Mr. Fargo would be much more to your benefit than would the sale to this other man at $32 a foot." Well, so I understood him. Now, at the time I went home, I believe—I think immediately after the agreement was concluded—I think I had put my lands in two offices—that block that was sold for $40,000—left it in each one a few days, & then withdrew it. I stated to Mr. Derby, & I believe to Mr. Kerfoot, that I was in Chicago three or four months too soon; that I ought not to have come out until October. I was convinced the lands would be a good deal higher then. My impression is that, but for the sale to Mr. Fargo, I should have left holding the lands. What would have been the result I don't know. Now, I find that, on the first day of August, as the records show, Mr. Derby sold block 4 for $28,000, he says. I am willing to take it at $28,000, as he states; that on the 5th of August, six days after my sale was made, he sold block 6, I believe directly north of 7, for $42,000, as I understand. About the 12th of September, of the same year, I think, he sold block one for $70,000, & block 2 for $75,000. Now, I think that Mr. Derby did not deal candidly & fairly with me at the time he made my sale, on the representation that a sale by him would produce a great panic, when, it seems to me, that at the time he must have been engaged in some of these negotiations. Now, I don't know—that's my inference; that is the ground on which my judgment is formed—& I think that a sale of block 6 at $42,000, about 33
478 per cent. more than block 7 was sold at in six days afterwards, does indicate, to my mind, that he was not dealing with me with entire candor. I think that block 7 was worth a great deal more, or a good deal more than block 4 was, at the time of these sales. Block 4 was on State street, & I believe that at that time property on State st., in that vicinity, was considered to be worth very much less than property on Michigan avenue, on Wabash avenue, or on Indiana avenue. Then the surface of block 4 was among the—about the worst—most nearly approaching the slough—of any in that immediate neighborhood. So there was a block, directly north of my block 7, sold at about 33 per cent. more in six days after, as I understand—I have not been to the original records—& a block directly north of that sold at nearly twice as much, within a very few weeks, as I understand. And I suppose that my understanding is correct, because Mr. Derby made considerable efforts the other day to get me to say that those houses had gone up within the last two years; &, as I understand, there were no houses put up there until after he sold them. Now, in a few weeks, as I understand it—I don't know when it took place—Mr. Fargo sold this block at a profit, & I never heard any more of the purchase, or of the proposed purchase by these commissioners, & therefore I think that Mr. Derby did not treat me well in that matter, taking all these facts together.

(Objected to by counsel for the plaintiff as immaterial & irrelevant; not a proper subject for cross-examination.)

479 Q. That is the explanation why you say that you think Mr. Derby didn't treat you fairly?

A. Yes.

Q. Mr. Pryor, how do you get your information as to the fact which you assert, that block six sold for $42,000?

A. I believe that the undivided ten acres west of State street was sold in the $86,000 sale, for $23,000; that is my belief.

Q. The question is, How do you get your information that block six sold for $42,000?

A. Do you want to know? I am going to answer this question in a way that will make it intelligible, if I can. I believe that the half of the 10 acres sold for $23,000, & I believe so from what Mr. Derby told me or wrote me. I believe that Mr. Derby sold the half of block five—I am not certain now which it was—for $21,000, & I believe that he sold this block 6 for $42,000; & I believe this from sitting down, taking a paper, and making these estimates, taking out the 23,000, & then put the 21,000 on the half of block 5, & that would leave 42,000 for the other. Now, if that was the precise sum which was agreed at the time, why that I can't state.

Q. You have stated in your explanation this morning, that it sold for $42,000, now I want to know how you get that information; you state that as a fact?

A. No, I don't; I beg your pardon.

Q. Then do you know at what it did sell at all?

A. I do not. I know that I learned—I have not examined the records—I repeat again, I learned that he sold the undivided interest in the 20-acre parcel west of State st.

480 Q. That was ten acres?

A. About ten acres; the half of block 5, & the whole of block 6, for $86,000. Mr. Derby informed me that he had sold the undivided interest in the ten acres for 23,000, & then it was an estimate, I believe; I think that's the way I arrive at it. I sat down & made an estimate that this must have been sold at about $42,000—or I will correct it if you prefer it—I will say that the half of block 5, & the whole of block 6, was sold at whatever 21,000 & 42,000 make. Put it in that form.

Q. I understood you to state this morning that block 7 was much more valuable than block 4?

A. In my opinion; I don't state it as a positive fact.

Q. I understood you to say, some days since, that the tract of land which Mr. Derby bought of Mr. Walker, in the Pryor & Hopkins' addition, in which tract block 4 is situate, was much more valuable than your lands south of that tract?

A. I think the average value of the Walker lands, block 4, 5, & 6, was considerably more than the value of my blocks, 7, 8, & 9, taking the 3 blocks together; but as between block 4 & block 7, I think that block 7 was worth a good deal more; that is, worth more.

Q. Is block 4 north or south of block 7?

A. It is north.

Q. How many blocks north?

A. It is directly; it is the next, on the next tier of blocks.

Q. One block north?

A. On the next tier of blocks, & two blocks west.

481 Q. Do lands become more valuable as you go from the city, or as you approach the city?

A. More valuable as you approach the city.

Q. Then, if block 4 be nearer to the city than block 7—if it be in the Walker portion of the Pryor & Hopkins' addition to Chicago, which you say is more valuable than your lands south of that tract—please explain why it is that you now say block 4 is not as valuable as block 7, south of it?

A. My statement was, & I now repeat it, that the average value of

the three blocks, 4, 5, & 6, is greater than the average value of blocks 7, 8, & 9, but that as between blocks 4 & 7, I think 7 is worth materially more than 4, for the reason that land on State st., at that time more particularly, I think, than that it is even now, was worth considerably less, very considerably less, than on Michigan avenue or Indiana avenue or Wabash avenue. There was a State-st. front there, worth materially less than any of the other fronts on any of the blocks; & then that land—the surface of that lot of that block—is not as good as the surface of the other blocks—very much inferior to the surface of block 7, I think. For these reasons I think that block 4 was worth materially less than block 7, while the average values of blocks 4, 5, & 6, is considerably greater than the average value of blocks 7, 8, & 9. If I said that I didn't consider wet lands worth any less than dry lands, that statement must go. I state it now, that wet lands are not worth
482 quite as much in the market as the dry lands, in improved property. If I made such a statement as that, I say it must go, & I must take the consequences. I say that whatever may be my own views about the value of these things, I think the market value of a block of low, flat, wet lands is not quite as great, I should think on a sale of $30,000 a difference of $2,000, $3,000, or $4,000, perhaps, as one of a higher surface, everything else being all equal. That is my impression.

Q. Do I understand you to say that Mr. Derby told you that he sold his interest in the Akerly lands; that is, the undivided 20 acres west of State street, for $23,000?

A. I say my recollection is, that Mr. Derby wrote me a letter stating that fact, & I believe he stated it to me verbally, afterwards, though I am not certain about that.

Q. If he made that statement was it a fair proportion—was it a proportionate value of the Walker lands that he made in the sale?

A. I have no opinion upon that point at all; I confine my testimony in values, entirely, & I desire to do so, to property east of State st. I really have very crude notions about the value of property on the west of State st., at that time. I had no interest west of State st. myself.

Q. Do you remember meeting Mr. Derby in New York, in company with yourself & Mr. Akerly, in the fall of 1868, after this sale?

483 A. I think I do.

Q. In that interview, did Mr. Derby make any propositions in regard to the land west of State st., the undivided interest with Mr. Akerly?

A. Yes; he told me he had sold & he came down with authority to make a settlement with me about the matter, or with Mr. Akerly. I told him that I knew Mr. Akerly's views well, & I was fully authorized to make a settlement, & he said he was authorized to make a settlement too, & we had a good deal of talk about in what form to make the settlement; whether Mr. Akerly would sell his land; whether one should take the parcel north of the railroad—The Stock Yard railroad—& the other the south parcel, paying the difference in value, or what should be done. I was very desirous for Mr. Akerly to obtain the north parcel of lands, & was willing to pay the difference in value, whatever that might be, but I had no idea of doing anything else for him. I said to Mr. Derby, "Now, Derby, you have no interest in this matter as between those parties. Now tell me fairly what is the difference in value, do you think, between this north & this south parcel." I believe we had, he said, "Well the difference, I think, is perhaps $1,500," or perhaps he said $2,000. I am not certain about that, but speak confidently of the

$1,500. I say I have little doubt he said, $1,500; I am satisfied, he said, $1,500, & he may have said $2,000. I am not certain about
484 that; perhaps, he said, from $1,500 to $2,000. We then had an understanding as to the form in which the difference should be paid, if the partition should be made in that way, by one taking the north & the other the south parcel; that is, so much cash, & so on. We then proposed to commence making the bids for the matter; that was my idea. I was satisfied that Mr. Derby put an excessively low estimate upon the property, & without undertaking to determine why he did it, it was enough for me that he did it. The matter began then by my offering $4,000 for the north parcel. Instead of taking his judgment about the matter, I offered $4,000. Mr. Derby seemed to be very much surprised, & I thought very much annoyed by the offer, & said that he saw that I didn't want to trade it; something to that effect. I said I certainly did; that I had full authority & he had full authority, & I had made an offer, now let him make an offer, but he finally left & we didn't meet any more. The parties, I believe through Mr. Derby, these offers were advanced from time to time by different persons, & finally I offered $6,250, I believe, for the option of taking that north side, or rather for that north side, & we would pay that difference. I don't remember whether it was rejected directly or not, but it was not accepted, & finally, when I came out here in May—& by the way, I happen to remember now—I didn't when you asked me the other day—that that was the only special business that brought me out here. I
484½ remained here after I had disposed of everything else that brought me—had nothing else to detain me at all, I think—some eight, ten, or twelve days waiting on Mr. Honore or Mr. Rawson, this partition matter settled. I came out determined to have it settled before I left. I thought this undivided interest was getting to be valuable & it was time the matter should be settled, & the other side seemed to be equally anxious. We finally made deeds of partition & the interests were severed. That's my recollection of what took place between Mr. Derby & myself on that occasion. Mr. Derby seemed to be determined to see Mr. Akerly. I stated to Mr. Derby, "Mr. Akerly will do nothing without my approbation. He bought this land under my advice, & held it, & I have managed it. I think he won't act in this matter except under my counsel." Mr. Derby seemed very anxious to see him, & I wrote, I believe, to Mr. Akerly to come down, & he came down & met Mr. Derby in an office where we three met. I don't remember now, particularly, what took place there. I said to Mr. Akerly, "Now, Mr. Derby is a very shrewd, clear-headed, capable man, and in dealing with him, you must bear this in mind." I knew he wasn't going to deal with him, but I said in talking, "You must bear in mind that Mr. Derby is a very clear-headed, shrewd man," but it was not necessary to tell him not to do anything, because I knew he would do nothing.

485 Q. Is it not a fact that you had a very considerable correspondence with Mr. Derby in regard to these Akerly lands; that is, soliciting bids from him, & making offers to him, in regard to the disposition of the land; making offers with a view to a partition or exchange?

A. Yes, I had.

Q. How much were you offered before you got through with this correspondence for the land, out & out, belonging to Mr. Akerly?

A. It seems to me we were offered $40,000; that is my recollection.

Q. That is for the 10 acres west of State st.?

A. Yes.

Q. The undivided ten which Mr. Derby owned with Mr. Akerly?

A. Yes, sir.

Q. Well, Mr. Pryor, if you had been offered $40,000, you were offered $40,000 for the Akerly interest in the 20 acres, how do you estimate Mr. Derby's interest in the same 20 acres at only $23,000?

A. I don't make any estimate of Mr. Derby's interest whatever. I tell you what Mr. Derby wrote to me. He wrote to me on the 23rd of August, I think, 1868, that he had as good as sold these 23 acres, I think, for $23,000.

Q. In your endeavor to deal with Mr. Fargo, did you not tell him that you would let him have your block 7 at $3 per foot less than it was actually worth, if he would give you the privilege of buying the block within one year?

486 A. I don't remember anything about the terms, what the amount was, or within what time. I don't remember about that, but I remember to have offered the lands to him at some less price—I don't remember now how much—than I had been asking, if he would give me the privilege of buying it back within some time, which I don't remember; some specified time, & at some specified price higher than he was paying. The sums or the time, I can give nothing about that. I have no recollection of the sums or the terms.

Q. Was Mr. William Whitehouse of this city, trying to sell those lands for you as your agent?

A. He said he was.

Q. Who else were trying to sell those lands for you?

A. I don't know, except Loomis, Potwin & Smith had a block for a few days, & Mr. Kerfoot had it for a few days. I don't remember exactly; not long though, I think, because I was here a good while before I fixed upon the value.

Q. They were all trying to sell lands for you?

A. I suppose they were.

Q. This block 7?

A. I suppose they were. I couldn't say that. I didn't authorize Mr. Whitehouse, I believe, to sell the lands. I said that you may make offers—I think that was my understanding as far as Mr. Whitehouse was concerned—you may make any offers you please; that's my

487 recollection of him. The other parties had the land at $40,000 for the block, but I think, Mr. Whitehouse, as far as I remember, I know he had no authority to sell at any specified price—I remember that. I think Mr. Whitehouse rather persecuted me to get me to give him a chance to sell some land, & I think I said "If you make offers & they are accepted & I sell the lands through you, I will pay you a commission."

Q. You seem to have been very much persecuted by all men in Chicago whose business it was to sell lands at that time, Mr. Pryor—I judge from your statements. Is not such the fact?

A. Do you want me to say anything in reply to that?

Q. Yes, sir.

A. I certainly was not persecuted by all men whose business it was to sell lands, nor have I stated anything of that sort that I remember; & I don't know that I have used the term "persecution" at all, unless I applied it to Mr. Whitehouse. I don't remember.

Q. I understood you to say heretofore this morning that you had no confidence in any person in the city of Chicago, or opinion of any person in the city of Chicago as to the value of your lands, & that you came here, & determined not to take their opinion at all in that respect,

but posted yourself by sales of other property in the vicinity of yours. Is not such the fact?

A. If I made those statements they must go. That's all I have to say, but I say now what I intended to say, & what I think I did say, that I found great difficulty in forming a correct judgment of the
488 value of my lands here from the opinions of the parties in the city, & I now say that many persons—persons sometimes talked to me at various times who know nothing about real estate, but that I found very considerable great difficulty—I repeat it—I found great difficulty in forming a fair judgment of the value of my lands from the statements to me of real estate agents. That is my statement. If you have the other statement here, why then——

Q. Where is block 6 situated with reference to block 7?

A. Directly north of it, I think.

Q. That is, it is nearer to the city than block 7?

A. Yes.

Q. One block nearer?

A. Yes.

Q. Which of the two in your judgment was the most valuable at the time of the sale?

A. Six.

Q. Block six was?

A. Yes.

Q. Then it ought to sell for more?

A. Oh, yes.

Q. How much more valuable was it than block 7 at that time?

A. Well, I am not able to say what the fair market value was, & I don't know that I could form a judgment of the market value. I am entirely satisfied, however, that it was not worth anything like
489 33 per cent. more, or worth one-third more than block 7. It was worth more, however.

Q. Where did you get your information that block 6 sold for $42,000, & how do you know that fact?

A. I don't think I have stated that I know that fact.

Q. You have stated that it sold for $42,000?

A. If I stated such a fact it must go. All I can say is I have seen the abstract of titles, & having learned that Mr. Derby sold the 10 acres west of State st., for $23,000, I inferred—I put it in that form—I inferred that block 6 must have been included at about $42,000, & the half of block 5 at 21,000.

Q. Then in point of fact you don't know whether block 6 sold for $42,000 or any other sum?

A. No; I have never examined the records, & I don't know that any of it has been sold at any price, except from information & belief.

Q. Now that being the fact, how does it come that you make the assertion it was sold for 42,000?

A. I ought to state there that, & I do now, *that* that was inference from the fact that the 10 acres had been sold for $23,000, & the other estimated in the way I have stated. I inferred the fact.

Q. If you only can state it from inference, & you don't know in point of fact that it did sell or ever was sold at all, why do you use that inference to blacken Mr. Derby in regard to your transactions with him?

490 A. I am not using it to blacken him at all. I am stating the fact, as I understand, that block 6 & the half of block 5 sold for $63,000. And I believe now that the half of block 5 sold for $21,000,

& the other half $42,000, or I will state that, having seen—having learned—that the two sold for $63,000, I inferred that block 6 was sold for about $42,000.

Q. You made the statement that block 6 sold for $42,000 in answer to the question how Mr. Derby had mistreated you. Now, if you did not know, in point of fact, anything as to the price at which that block was sold, why did you use the inference in that connection?

A. I used the inference in that connection, because it was before the subject of examination—it was for consideration. These two parcels, as I understood, sold for $63,000. If I stated it otherwise & confidently then I stated it, I will say now, inadvertently.

Q. Inadvertently?

A. Yes, sir, inadvertently. Now I will state that the two, as I understood, sold for $63,000, & then any person may infer——

Q. Where did you get your information that the block & a half sold for $63,000; that is block 6 & the half of block 5?

A. I think I have heard Mr. Derby say over & over again that he sold the half of the ten acres—half of block 5 & block 6 for $86,000.

491 Q. The half of these ten acres?

A. No; the half of the 20 acres—the 10-acre parcel.

Q. For $86,000?

A. $86,000. Then I have Mr. Derby's letter, I think, in which he stated that he had sold that for 23,000, & I believe he stated that to me afterwards in New York.

Q. 10 acres?

A. Yes, sir; & left the ½ of block 5 & half of block 6, as I estimated $63,000.

Q. Then you put an estimate of $21,000 on the half of block 5. Where did you get that estimate—your knowledge with regard to that estimate?

A. I got my knowledge—it is inference as I say. I infer that only from the course of prices. I think, perhaps, I was assisted in that, too, by the fact that $21,000 was paid for the other half of 5, about or some time after that. I remember about that particularly. Perhaps that assisted me in forming an estimate.

Q. Since all this is merely inference, I ask you again why you say that Mr Derby dealt unfairly with you in the sale of block 7?

A. I don't know whether I could do anything else than to go over the whole history of the affair again, the facts that I have stated & the inferences which I have stated.

Q. Then, when you say that he dealt unfairly by you, it is a mere inference is it not?

A. Yes.

492 Q. From what you have already stated?

A. Oh, yes; it is an inference. I couldn't pretend to state it in any other way.

Q. I will now ask you what reason you have for using those inferences at this particular time?

A. Because you have asked about that transaction.

Q. No; I asked you whether Mr. Derby had not always dealt fairly by you, & you said that he had dealt very unfairly.

A. I mean to say, if I said he had dealt unfairly with me—put it now that I thought he dealt unfairly with me, for I certainly didn't intend to put it in any other form.

Q. Is it not the fact that in the sale of all this property in the Pryor

& Hopkins' addition each piece was sold at an advance of the piece previously sold?

A. At that time, I think it was.

Q. A steady increase?

A. I think so. I was not here myself, but, as far as I learned, I believe it advanced, & I sh'd judge so from the fact that sales were made for myself a year after at much higher rates. If you will allow me, I will make a statement about the block 7—the sale of block 7. I believe that I have never mentioned the facts about that to any person in the city of Chicago—to no person whatever, & I don't know that I ever should have named them to any person had they not been called out on this cross-examination.

493 Q. I understand you to say in the course of your examination that Mr. Derby offered you $1,800 an acre for your land in the fall of 1867?

A. No; I think I didn't say he offered. We had a good deal of discussion, I believe. He wrote to me to meet him in New York. I went down & met him, & he was extremely urgent for me to sell him some land—very urgent; pressed it upon me most vehemently, almost. We had a good deal of talk about it, & just before we separated, he said he had hoped I would sell him some at about $1,800 an acre, as, I remember now. I had refused from the start, as I remember it, to negotiate upon any terms below $2,500. The truth is, I didn't want to sell the lands; didn't care to sell them; & he continued to advance in what he said about the value from some much lower point—I don't remember now what it was—until he made the statement, as I remember now, that he had hoped that I would sell some at about $1,800. He stated that he had the blank deeds in his pocket; brought them along, hoping that he could fix the matter before he left the city.

Q. I understood you to say that you did not solicit any offers from Mr. Derby; had no wish to talk with Mr. Derby, or any one, with a view to sell any of your lands?

A. At what time?

Q. At this time.

A. In the fall?

494 Q. Fall of 1867—in the fall of 1867, at the time he met you in New York.

A. I don't remember to have made that statement.

Q. You do not?

A. I don't; I don't remember whether it was—whether I made the statement, or whether it was a fact, or otherwise at that time. I don't remember to have made those statements at the time at all.

Q. How is the fact in that regard?

A. I did have a high opinion of the land, & I don't remember to have objected to talking to anybody about it, or about its value.

Q. With a view to selling it, how is the fact?

A. I don't remember that I had any definite views at that time upon that point. I can't speak exactly what my views were at that time. My impression is that I didn't wan't to sell them.

Q. Is it not a fact that at that time you expressed a desire to see Mr. Derby, & to talk trade with him?

A. Not that I remember. I think that conference commenced by—was at his instance. He wrote me, I think, at my residence in Connecticut & asked me to meet him in New York. That is my recollection of it.

Q. That is your recollection of it?

A. That is my recollection of it.

Q. Do you remember writing to him?

A. I think it likely I wrote him in reply to his letter.

495 What I said I don't know. That must speak for itself.

Q. The question I put is, whether at that time you expressed a desire to see Mr. Derby & talk trade with him?

A. Well, I say that I don't remember anything about that.

Q. You don't?

A. No; I don't. My letter will show that if I did.

Q. Now you say that you told Mr. Derby at that time, in October, 1867, when he offered you $1,800, that you would not sell for less than $2,500 per acre?

A. No; I don't think I said I would not sell for less than $2,500 per acre. My recollection is that I refused to negotiate on any basis less than $2,500. That is the form in which I understand it, & that is the form in which I desire it to be put down. If it is put in any other form it must stand.

Q. Why did you want to sell at that price at that time when you considered the land worth, as you say it was, $8,000 per acre?

A. I don't know that I did want to sell then, & when I put what I understood—put that basis—that I wouldn't negotiate it on less than $2,500, I understood that to be materially above the market at that time, & that it was equivalent to saying that I didn't want to sell. That's just my present impression of what I thought then; how

496 I thought then I can't pretend to say. I can't pretend to detail all a man's thoughts.

Q. Now, is it not a fact that every chance you had to make a sale you did so?

A. It is not a fact.

Q. It is not?

A. No; at least if I understand the applications & offers made to me.

Q. Well, sir, is it not a fact that every time you got an offer which you considered satisfactory to yourself you did make a sale?

A. Every time I got an offer which I considered entirely satisfactory to myself I made a sale.

Q. When you considered your lands down there worth $8,000 per acre, & you had realized money enough from sales to Mr. Derby to pay off your encumbrances—indebtedness—here?

A. No, sir; that incumbrance is not paid yet. The party wouldn't take the money.

Q. Why did you offer to take $2,500 per acre?

A. I did'nt offer to take $2,500.

Q. Did you not say you were willing to take that?

A. I don't think I did.

Q. Would you have sold at that price?

A. I don't know what I would have done.

Q. Why did you mention $2,500?

A. I remember, now I think, it was some hundreds of dollars above the actual market value, & that therefore it was equivalent to saying that I didn't want to sell. That is my present impression.

497 Q. If you had been offered $2,500 then, would you have taken it?

A. I can't say what I would have done; I can't say. As to the $8,000 an acre, that is what I meant by the intrinsic value; how many years it would take to develop that value, I could not determine; I

thought it might take a long time, but I thought that the prices would run in a few years in such a way as to show that they were worth at that time that sum, & I was correct in my judgment at that time, for they sold, in two years afterwards, for $13,000 an acre, some of them.

Q. You voluntarily state that it is due to yourself to say that when Mr. Derby proposed to make an offer, or swap, or exchange or real-estate trade with you, that he told you the Michigan-avenue property which you got of him, he had refused $170 per foot for?

A. Yes.

Q. And that he said to you that it was worth $160 per foot; that Kerfoot & Co. said to you it was worth 160 per foot. Do you now swear to that?

A. I swear to that, to the best of my recollection.

Q. Well, since you swear to that to the best of your recollection, I will ask you now is your memory as clear on that point as it is that Mr. Derby said he could sell the Walker lands for a good profit?

A. Yes, I think it is.

Q. About as clear, I think so; yes.

498 Q. Can you be mistaken as to what Kerfoot & Co. did say to you?

A. Could I be mistaken?

Q. Yes.

A. I suppose I could be. I would not say I couldn't be mistaken.

Q. If you could be mistaken in that regard, could you not also be mistaken in regard to what Mr. Derby stated to you, if anything, as to his ability to sell the Walker lands?

A. Yes; I think I would be as liable to make a mistake in that as in the other, but I am as satisfied about both statements as I can be about anything that rests in memory. And Mr. Derby stated to me here, within the last 48 hours I believe, that he had been offered $170 for that land. Therefore, I think I was not mistaken. I had forgotten that at the moment.

Q. Since you are not very clear on that point, or either point, as to what Mr. Derby said, or what Kerfoot & Company said, why did you make this voluntary statement with a view to poison this matter against Mr. Derby?

A. I am exceedingly clear on both statements—I am exceedingly clear. I speak in the most confident manner from my memory & recollection.

Q. And that is why you do it?

A. That is why I do it. I am as clear as I can be about anything that rests in memory alone.

Q. Was that the object that you had then in stepping out to make this voluntary statement?

499 A. I don't quite understand how you mean that it was a voluntary statement. How did it come out?

Q. You make it a voluntary statement. You say that it is due to yourself to state that when Mr. Derby proposed to make a sort of swap or exchange, that Mr. Derby told you the Michigan-avenue property, which he offerred to trade, he had received $170 per foot for.

A. I think I made that statement after this table—that statement about the results of that Michigan-avenue sale contained in Mr. Kerfoot's letter—I think it was after that was read, & I felt that I would like to have that explanation connected with that statement.

Q. Are you sure that Kerfoot & Co. said they could sell that for $160 a foot?

A. I speak with confidence upon that point. I say that my clear conviction—my strong impression—is, that they said they could readily sell at $160 a foot.

Q. Do you remember writing to them anything about it?

A. I don't.

Q. You don't?

A. No, I don't remember; I had a number of letters with them. I wrote a number of letters to them after the sale was made, when I went home; had correspondence with them about this matter.

Q. The statement to which I refer is simply this: You say, "I think I owe it to myself to make the statement. Mr. Derby offered me that at $170 a foot, & said he had been offered $170 a foot for it, & it
500 was worth that. I spoke to Mr. Kerfoot about it & he said it was not worth $170 a foot, but it was worth 160, & that he thought they could readily sell it for that. I stated at that time that if I took that land from Mr. Derby I should take it to resell it immediately. I stated to Mr. Kerfoot, when I bought it, that I should put it in their hands immediately for a resale." You further state, "I didn't intend to keep it. I would not take it to keep. When I took it, I put it into their hands to resell at 160 a foot. It was not sold until September 28th, until it was sold for 135 a foot. I paid $170; I paid that on the faith of the statement of one of the parties that the land was worth $170, & of the other party that it was worth 160." Now what do you say as to the fact?

A. To what?

Q. Do you still make the same statement?

A. Yes, on my belief. If it is not put in that form there it ought to be, & I put it now on my confident belief that the statement is correct.

Q. Now, Mr. Pryor, is it not a fact that almost immediately after you traded with Mr. Derby for the Michigan-avenue lots, you instructed Kerfoot & Co. to sell the lots for $130 per foot?

A. Immediately after I put them?

Q. Almost immediately after, I said, I will read my question over again.

A. (After hearing the question.) I bought that property intending not to keep it; put it in their hands for sale. They & I had
501 some correspondence about the matter, & I don't remember now what it was particularly, but they informed me after awhile—how long it was, I don't remember—that the best they could do was to sell at $130 a foot, & I believe I authorized them to sell at that. I don't think that was immediately after; I don't remember how long it was after, but it was some time after.

Q. You did authorize them some time afterwards to sell it at $130 per foot?

A. I think so.

Q. Did they not sell it at $135 per foot?

A. I think they did.

Q. When you learned of the sale from them at $135 per foot, were you not inclined to back out of it?

A. No; I am never inclined to back out of a thing I am bound to—that I made an agreement upon. I wrote a letter, though, I think, expostulating upon the low sale which they had made of the property—the low rate at which they sold the property, & stating, I believe, something in reference to Mr. Kerfoot's statements to me, made at the time I took the property.

Q. Had your faith in Chicago property—in south-side Chicago prop-

erty—begun to falter at the time you authorized them to make a sale of these lots at $130 per foot?

A. It had not; but as I say, I took the property not intending to keep it; & I may as well state, as a peculiarity of mine, when I have a parcel of property that I don't want to keep—that I don't take for that purpose—I always sell it as quick as possible; & I have done so
502 before, & without very much reference to the market value.

Q. Since your faith in south-side Chicago property at that time had not commenced to falter, I ask you why it was if Kerfoot & Co. had informed you that these Derby lots on Michigan avenue were not worth $170 per foot, but were worth $160 per foot, & you thought they were worth $160, as you say Kerfoot & Co. had informed you they were, why did you put them on the market at $130 per foot?

A. I didn't put them on the market at the time at 130 a foot.

Q. I don't say at any time, I say why did you put at 130?

A. I must repeat that I took this property not intending to keep it; with no very definite idea of the value in that neighborhood; with no purpose whatever to increase my real-estate interest. My desire was, whenever I sold, not to put any more money in Chicago, & this property seemed to be heavy on their hands, & I wanted it sold without reference—I did not think about valu's at all in regard to that, I think, at the time—but after the sale, I believe, I reminded them of what took place at the time we bought the property—at the time I bought the property. I may state further, that this property which I own south of the city is a sort of pet of mine; I have owned it so long that I am attached. It may be very absurd, but I do attach a value to it which I would not to any recently-acquired property.

Q. Well, Mr. Pryor, is it not a fact that when you made that
503 trade with Mr. Derby for the 14¾ acres, you were laying low for him; making him believe that you thought the Michigan-avenue lots were worth $170 a foot, when, in fact, you were estimating them at $130 per foot?

A. I did not estimate them at 130. I took his & Mr. Kerfoot's estimate as about the value of the property.

Q. Is that your answer to the question?

A. Is there any other portion of it you want answered?

Q. The question was simply this, Was it not a fact that you lay low for Mr. Derby, making him believe that the Michigan-avenue lots were worth 170, when, in fact, you were estimating them at 130 per foot?

A. It is difficult to answer that question—what you mean by lying low. I took no efforts to make Mr. Derby believe anything about it myself; none whatever.

Q. Well, sir, was it not a fact that you were then playing smart on Mr. Derby when you were trying to carry the idea to him that you would not sell to him except on the representations that Mr. Derby was to make improvements?

A. It is very difficult to answer such a question as that. I have no recollection of practicing upon Mr. Derby in any form, or to any extent whatever. I think I have dealt with Mr. Derby in a perfectly candid, frank, & fair manner throughout. I made no attempt to mislead him in any way whatever, I know.

Q. Well, you say you sold to him on the ground that improvements were to be made?

A. Yes.

504 Q. Well, sir, that being the fact, what did Mr. Derby say when he discovered the joke, that after selling him the 14¾ acres on the

improvement dodge, you were still ready to sell him 18¾ acres, which was nearly all the land you then owned in that neighborhood, at a still less price?

A. No; I owned more than two blocks afterwards. I think I owned about 3 blocks. 2 blocks—more than 2 blocks—afterwards; yes, more than two blocks. I don't remember anything about any joke. After the sale of the 14¾ acres was concluded, Mr. Derby asked me what I would take for the other 3 blocks, as I think—that is, as I remember them now. I informed him that I didn't own all of the 3 blocks. I believe the 3 blocks contained, belonging to me then, about 18¾ acres. At the moment I was——

Q. Is that the only answer you can make?

A. If I had sold these 3 blocks, I would have still owned more than 2 blocks in the subdivision. My impression then was, & is to-day, that blocks one & two are worth a good deal more than blocks ———; that blocks 1, 2, & 3, are worth a good deal more than blocks 4, 5, & 6, & a great deal more than blocks 7, 8, & 9, & that when I offered those lands to him at that price I thought they were worth a good deal less than the lands I had sold. And yet I believe the offer was at about the same price which he had agreed to pay for the 14¾ acres, or very near it.

Q. You don't seem to answer the question, Mr. Pryor.

A. If I don't it is because I have not grasped the question
505 exactly.

Q. The question is, What did Mr. Derby say when he discovered that joke?

A. I don't know that Mr. Derby discovered any joke. I don't remember; he certainly stated nothing.

Q. He didn't say anything?

A. He said nothing to intimate to me, as far as I remember, that he saw any joke in it.

Q. If there was no joke in it——

A. Just wait a moment; one's memory becomes refreshed by these frequent examinations & recurrences to events that have passed. I think he said that he could not take it, because he had already bought, or agreed to buy, so much he could not buy any more; or didn't want to buy any more; something of the kind.

Q. That is the only thing he said?

A. That is all I remember, I think; or perhaps he said something about trying to get some friend to buy.

Q. Why were you playing this improvement dodge on Mr. Derby? Or is this improvement dodge something that you have studied up since you have commenced preparing your evidence in this suit?

A. The statements which I have made about that matter are exactly as I remember them at the time; no preparations made; no studyings up in this suit.

Q. In trying to make sale of this land to Mr. Joel D. Harvey, did you try the improvement dodge on him?

A. I don't think I ever tried to sell any lands to Mr. Harvey.
506 I think I can say that it is my confident belief that I never made any attempt to sell Mr. Harvey anything.

Q. Did you offer this same property to him?

A. I think not.

Q. Never?

A. I think not.

Q. Do you know Mr. Lombard of this city, who was in the office with Mr. Harvey?

A. Well, I saw Mr. Lombard there in the office once, I think. I don't know as I saw him any more or not.

Q. Well, sir, did you offer to sell him the lands?

A. I think not. I have no recollection of making any offer to sell lands to him.

Q. If you had offered to sell the land, in point of fact, to either Mr. Harvey or Mr. Lombard, would you not remember that fact as well as any other fact that you have been testifying about?

A. Perhaps I would; I can't say about that. The total absence of all recollection on the point persuades me that I never did offer the lands to them.

Q. Did you have any talk with either of them in regard to the land?

A. I was in the office once. Yes, & I recollect now that an estimate which I placed upon the value of my lands—on some of my lands there, was laughed at by Mr. Lombard as very extravagant & absurd.

Q. What estimate did you then place upon your lands?

A. I don't remember at all what estimate I made.

Q. If you didn't offer the lands to these gentlemen at all, how
507 did you come to place an estimate on them to them?

A. I don't remember, I say, when this was even; I don't remember. I may have placed an estimate. It may not have been a good estimate. It may have been a very extravagant one.

Q. How many times have you been in their office?

A. I don't remember to have seen Mr. Lombard but once. I think I have seen Mr. Harvey 2 or 3 times.

Q. At the time you saw Mr. Lombard, when was that.

A. I don't remember when that was. I can't fix the time.

Q. Where did you see Mr. Harvey the several times you saw him?

A. I don't think I ever saw Mr. Harvey more than once or twice or three times. I think I saw him at his office two or three times. He wrote letters to me at New York, inquiring about my lands, & I had a way when they wrote to me about my lands, & I came out to Chicago to see them.

Q. Did Mr. Lombard ever write you any letters?

A. I think not.

Q. How did you come to see him?

A. He happened to be in the office. It seems to me that he had his office there. I am not certain about that at all.

Q. Was that the first time you had called on Mr. Harvey that you saw Mr. Lombard?

A. I don't remember; I don't recollect.

Q. But you do remember having some conversation with them in regard to this 14¾ acres of land which you sold Mr. Derby?

A. I don't—no—no recollection. I talked with him about some
508 of my lands, but which particular parcel I have not the slightest recollection.

Q. You have no recollection that you offered to sell these 14¾ acres lands, which you sold Mr. Derby, to either.

A. No.

Q. Did you offer to sell them any other land in that tract at that time?

A. Not that I remember. I have not the slightest recollection of offering to sell them anything.

Q. Did you ask them with a view to getting offers?

A. I think not. I don't remember anything about that, though. I

can't say now. I really— My recollection of the whole thing is rather vague.

Q. Your recollection of it is simply this, that you had some communication with Mr. Harvey in regard to the lands, & you called upon him at his office when you came out here?

A. He had written to me at New York about my lands, & I called to see him when I came out here.

Q. For what purpose did you call to see him?

A. I must say again, in those days, whenever I received applications from persons about my lands in Chicago—in regard to them at all, I most usually, when I came to Chicago, called to see them about the land, but having found that such different statements were made by parties about my lands, & as to what I had said & done, that for the last two (2) years, I think, I have lately quit that. I don't go into real-estate offices now, & I don't go & see anybody I get letters from about my lands any longer. On account of these, I don't go to see any
509 stranger that writes about my lands.

Q. What do you mean by those conflications & confusion?

A. Conflicts of statements. I heard persons saying that they had my lands, I didn't know at all. I heard of other persons, that had forced themselves upon my notice, saying they were authorized to sell my lands, & I found it was necessary to be extremely careful & cautious.

Q. Who were those persons that say they had your lands that you didn't know at all?

A. I don't remember.

Q. How did you know if you don't remember them, or their place of business?

A. All I know is, people made these statements to me in the street sometimes. I don't charge my memory.

Q. Please name one person that made such a statement.

A. Mr. Kerfoot, for instance, states that he knew I was trying all the real-estate offices in Chicago, & knew that I was receiving visits at the hotel. Now, that was a statement that I think was not authorized by the facts. That is my impression, & other similar statements—not similar exactly to that.

Q. Now, as to the statements you make that various parties pretended to have your lands for sale whom you did not know at all, I want to know if you can name a single one of those persons?

A. I don't think I can.

Q. Can you name any one who told you about them?

A. No; I can't recollect any one now. It seems to me that Mr. Derby has told me that he heard of parties having my lands for sale
510 that I knew did not have the lands for sale. I am not certain about that, though.

Q. I understand you to say that in March & April, 1867, or about that time, you had many letters written to you in regard to your lands?

A. I had a number. I don't know that I stated how many, but several letters.

Q. And several applications as well?

A. Yes.

Q. I further understand you to say that you were in the habit of answering letters promptly, & call upon the parties when you came to the city?

A. If I have made that statement here it must go, but I don't remember to have made the statement, & don't think I did.

Q. How is the fact?

A. That I was in the habit of answering civil letters that were written to me in regard to my lands. That's what I ought to have stated, & what I now state.

Q. Did you answer all those letters?

A. Now, since this examination began, I don't think I did answer them all. I think I got tired after awhile, of answering them all—letters to persons I knew nothing about, or never heard anything about.

Q. Did you call upon the parties whom you did answer, if you came to the city?

A. I think I called upon Mr. Harvey; though I am not certain about that. Mr. Harvey has written me, I think, several letters at different times.

Q. Who else besides Mr. Harvey wrote you from Chicago about your lands in 1867?

511 A. I don't remember. The letters were destroyed, as of no consequence whatever.

Q. Who did you call on beside Mr. Harvey when you came out here in the spring of 1867, in regard to your lands?

A. In regard to my lands, I don't think I called upon anybody, except Mr. Kerfoot.

Q. Didn't you call upon Mr. Harvey?

A. Not about my lands specially. I think I went to see him, perhaps, because he had written me letters lately, or because I knew him. I am not certain that I went to see him in the spring. It may have been when I was here in December. I was here in December, 1866, & I may have received those letters from him before. I don't know about—I can't fix the time.

Q. Is it not a fact that those various letters & applications which you received in the spring of 1867 induced or caused you to put on an extra value or price on your lands, or stimulate us to believe that they were in great demand?

A. I certainly thought that they were in demand, great demand, & I believe now that they were then looked upon—that 80-acre parcel—as the most valuable land outside of the city of Chicago, & that all the principal real-estate speculators in the city were looking at them, & manœuvering in various ways & forms to get at them.

Q. Now, sir, at the time that you received these various applications & various letters from this city in regard to your lands, that is, before you came out here, was not the "park" question being agitated in the city of Chicago?

A. Yes, it was, as I understood from people I saw; &, indeed,

512 I was out here in December, when it was agitated.

Q. Didn't that have a great tendency, if not the principal tendency, to stimulate the price or supposed price of those lands, & caused parties here to be anxious to ascertain what they could be bought for?

A. My idea is that the "park" matter had very much to do with the advance in real estate at that time. What effect it had upon the minds of other people I am not prepared to speak about.

Q. I understood you to say that you paid the taxes for Judge Hopkins during the war?

A. Yes.

Q. On the lands which he owned in Pryor & Hopkins' addition?

A. Yes, sir.

Q. State how they were paid.

A. How do you mean? In what way?

Q. Whether they were paid in your name?
A. Paid in my name, I believe.
Q. Paid in your name?
A. Yes. I think for convenience sake all the taxes for lands owned by my friends out here were all paid in my name.
Q. Were they paid separate from your own lands in that addition, or were they paid generally with them?
A. They were paid according to assessments. The receipt was given to me in my name?
Q. Did you take one receipt for your own & his lands?
A. I think so.
Q. Only one?
513 A. Only one receipt for all, I think, & for the two or three other parcels owned by my friends. It was all in my name, I think.
Q. I understand the taxes were paid by you?
A. In the form, yes. I may state, too, that I advanced taxes on two other parcels for six or eight or ten years, before I got the money back again.
Q. Will you please state what your opinion was as to the value of those lands in the Pryor & Hopkins addition in the years 1862 & 1863?
A. I don't think I had—indeed I know I had no opinion of the market value, because I was not here; as I remember I made very little inquiry about this property as long as it lay, as I understood perfectly dead.
Q. Did you really believe that they were worth or could be sold for $250 an acre at that time, or did you think there was any market value at all for them at that time?
A. From what I have learned I think there must have been a period here when I don't think they would have brought any more than $250. I can't say. That is a point by which I have nothing to judge. I think the market was very much depressed. I have no idea—I can't answer a question that I cannot possibly answer. I have no data to go by.
Q. You still kept the matter in view, & from that fact state whether there was any market value for them at that time or not.
A. I can't say about that.
Q. What was your own estimate—sincerely your own estimate
514 of their value at that time?
A. I don't think I had any estimate at all of their market value.
Q. You were paying taxes upon them; you certainly gave them some estimate. I want to know what that is.
A. I can't give any estimate.
Q. Can't, eh?
A. That they had intrinsic value, that I felt certain of, which would some day be developed I—but I know I can't state anything now of any opinion which I had at that time of their market value. I have stated that I think the market value must have been very low, if it had any.
Q. I understand you to say that Mr. Edgar Loomis did not inform Mr. Walker of the trouble between Mr. Kerfoot & Mr. Derby. Do you know who did?
A. That Mr. Loomis did not? I didn't mean to make that statement, & I don't make it now. If I made it, let it go.
Q. Do you know who did inform Mr. Walker?
A. I shan't answer that question. I didn't inform him, directly or indirectly.

Q. I don't ask you, Mr. Pryor, just now, who did. I only ask you if you know who did inform Mr. Walker?

By Mr. HILL: Of what?

By Mr. MCKINNON: Of the trouble between Mr. Kerfoot & Mr. Derby.

By the WITNESS: Mr. Hill, have you no objection to that?

By Mr. HILL: I have no objection at all.

515 A. It seems to me I have heard.

Q. What do you mean by saying, "It seems to me I have heard?"

A. That is my recollection. My recollection is, that I have. Who informed me—

Q. Who informed Mr. Walker?

A. Yes.

Q. Then you do know who informed him?

A. No, I don't know.

Q. From your information?

A. From my recollection.

Q. From your information you do know who informed him?

A. It seems to me that I know who informed me, & I mean when I say that, that is my belief.

Q. Upon what is your belief in that respect based—information or actual knowledge?

A. Upon information.

Q. From whom did you get your information in that regard?

A. I think I got it from Mr. Walker.

Q. The plaintiff Walker?

A. Yes.

Q. When did you get that information from Mr. Walker?

A. In the spring of 1869, I think.

Q. Where was that given to you?

A. In New York.

Q. At what time in the spring of 1869?

A. I think it was March.

Q. 1869?

A. Yes.

516 Q. What time in March, 1869, did he give you that information?

A. I don't think I have any recollection of the time, whether it was early or late.

Q. Well, give your best recollection as to whether it was in the fore part, or the latter part, or the middle of March.

A. I have no recollection about it in one way or the other.

Q. How did Mr. Walker come to give you that information?

A. I think he called to see me to ask me something about my sale to Mr. Derby; then it was, I think, he gave me this information.

Q. Had you had no correspondence or talk with Walker from the spring of 1867 to the spring of 1869, in that regard?

A. None whatever—none whatever; not a syllable had passed between us about the matter.

Q. Was it before the commencement of this suit that he so informed you?

A. I don't know when this suit was commenced; the conversation, I think, was in March. When this suit was begun I don't know.

Q. Did you come out here in March, 1869?

A. No, I did not.

Q. When did you come out here, in the spring of 1869?

A. I think I came out in May.

Q. Was it before you came out here that he so informed you?
A. Yes.
Q. How long before you came out here did he so inform you?
A. I don't remember.
Q. How many days?
517 A. I don't know.
Q. Was it as many as ten days?
A. Yes, it was more than 10 days.
Q. Was it as many as 12 days?
A. It must have been; it must have been somewhere between 30 & 60 days. I think I came here early in May, 1869, & I believe he told me this in March, but I have no definite recollection of the time in March. I think it must have been from 30 to 60 days.
Q. Now, sir, will you please state what he did tell you?
(Objected to as incompetent, immaterial, & irrelevant.)
A. I dislike very much to answer these questions that implicate or apparently implicate other people. Mr. Walker made a long statement to me, & at the time my health was very bad, quite feeble, & he worried me before he got through with the details of his statement, very much indeed.
(Counsel for plaintiff here objects to any testimony as to any communications between Mr. Pryor & Mr. Walker, as privileged communications.)
Q. Well, I think I will get an answer to that question before I get through with this case.
A. Mr. Walker, I think, stated that he had been advised about that thing several times. The particulars which he gave me in detail I don't remember, because, as I say, I was excessively worried with him before
he got through. The story was a long one, & my health was
518 feeble at the time, & I don't remember that I could recall any of
the facts that he stated at that time—from his memorandum which he had—without recurring to the facts which I have learned since. Now, if you want any statements that his counsel made to him, that is a point for Mr. Hill to determine whether he is willing, because he stated facts to me that his counsel had stated to him.
Q. I simply ask you to state the conversation that took place between you & Mr. Walker, when he informed you, or gave you to understand, who informed him of the trouble between Mr. Kerfoot & Mr. Derby, from which this suit originated. I don't ask you to give anything that Mr. Hill may have stated; those are privileged communications.
A. I don't remember a single fact that Mr. Walker stated to me at the time, I believe, apart from what I have since heard & learned. I think that if I had not had my memory refreshed since, by looking at documents & hearing statements, I should not recollect a single statement that Mr. Walker made—not one; that is my recollection. Mr. Walker called upon me, at my house, as I say, at a time when my health was not good at all, & before he got through I was very much—became quite nervous & worn out.
Q. You say you do know, from what Mr. Walker told you, who advised him of the trouble between Mr. Kerfoot & Mr. Derby; do I understand you correctly?
A. I don't believe I can state anything except what has
519 come through Mr. Walker's counsel.
Q. How is it that your recollection is so admirable on all other points, & that when it comes to a matter of that kind, which only transpired a year since, & in which you have taken such an interest, on ac-

count of the friendship between you and Judge Hopkins, and his heirs, at all times, you are now unable to state anything about it?

A. I don't know that my memory is so good.

Q. Isn't your memory as good in regard to a fact that transpired a year ago, & in which you have evinced so much interest as you do here, as it is in regard to facts that transpired three years ago, or does it improve with age?

A. Recollections of facts relating to business matters impress themselves much more strongly on my mind than do mere general discourses, when there is no business point in view. I repeat, that at that time my health was very bad, so that I did not go out; that day, as I say, Mr. Walker called & worried me very much, & I don't think that Mr. Walker said anything but what came from his counsel.

Q. I don't know what he said, but I simply want to know what he did say?

A. As I say, I can't remember now—I don't remember; I don't think he stated to me any information that he had got about this matter, except in connection with his counsel.

Q. I don't ask you to state what his counsel stated to you, or what you heard his counsel say, I only ask you to state what Mr. Walker said to you. I don't care where he got it.

(Objected to.)

520 A. I can't state anything more special, I think, what Mr. Walker said to me.

Q. You have not stated anything that he said to you?

A. I don't think I can remember anything that he said to me specially.

Q. Do you remember whether he called upon you at all or not?

A. Yes, I do; he called upon me, & we talked about this thing.

Q. Do you remember where you were when he called upon you?

A. Yes; he called on me at my house.

Q. In the city of New York?

A. Yes.

Q. Do you remember why he called on you?

A. He called on me to learn some facts, I think, about my sale to Mr. Derby; that was my understanding.

Q. And in that interview gave you the information that you have?

A. What information?

Q. In regard to the trouble between Mr. Kerfoot & Mr. Derby?

A. I don't think he said anything about any trouble between Mr. Kerfoot & Mr. Derby; I don't remember that he did.

Q. If you don't remember that fact, will you, then, please state what he did say, so that we will know?

A. When you ask me particularly of any fact, then I will answer you; that is specific fact you now inquire about.

521 Q. I will ask you one specific fact that you can either answer or not answer. Who did he say gave him that information; who did he tell you gave *you* that information?

A. I don't remember that he gave me any name apart from his counsel. *I don't remember that he gave me any name apart from his counsel.*

Q. Who was with him at the time?

A. I think nobody was with him.

Q. Then his counsel was not with him?

A. No, his counsel was not with him.

Q. Now, I ask you to state who he said gave him the information?

A. I think he said Mr. Hill was one of the parties who gave him the

information; others had given him information, I think, but I don't remember who they were or what they were.

Q. Did he say anything about Mr. Loomis, of the firm of Loomis, Potwin & Smith, in that conversation?

A. I think not.

Q. Did not?

A. I think not; I have no recollection of his having said anything about them.

Q. Did he ever mention a Mr. Reynolds—a man named Reynolds?

(Objected to.)

Q. Did he mention to you the name of Reynolds?

A. I don't remember whether he did or not.

522 Q. At that time?

A. I don't remember.

Q. Did he ever mention his name to you?

A. I think he has; I think I have heard him speak of Mr. Reynolds, but whether mentioned at that time or not, I don't remember.

Q. Now, is that the best explanation, or the best history of your conversation with Mr. Walker you can give?

A. I think it is.

Q. That is all you can give?

A. I think so.

Q. I understand you to say that Mr. Walker at that time called on you with a view of finding out something in regard to your dealings with Mr. Derby?

A. Yes.

Q. Did you give him a history of your dealings with Mr. Derby?

A. I don't remember now whether I did or not.

Q. Did you ever do so?

A. I talked with him about it.

Q. Did you ever give him a history of your dealing with Mr. Derby?

A. I don't know that I ever gave him a detailed history—what would be called a history; I talked with him about my dealings with Mr. Derby.

Q. Did you tell him that you had been offered $1,500 an acre before you came out here?

D. I don't remember to have mentioned that to Mr. Walker; I suppose I did, though.

523 Q. Did you tell him that after you came out here you sold to Mr. Derby a great deal less; that you sold to Mr. Derby a portion of the land for a great deal less sum?

A. I don't remember whether I did or not; I can't remember.

Q. Did you tell him that after selling 14¾ acres at a great deal less than you say you were offerred in New York, you say you offerred to sell 18¾ at a great deal less rate?

A. I don't remember that I did.

Q. Did you tell him that after trying the market here pretty well you sold to Mr. Derby cheaper than you had been offerred?

A. No; I never told him that I tried the market at all.

Q. Did you say anything to him at that time, or any time, to ease his mind in regard to this sale to Mr. Derby?

A. I don't know that I did; I don't know what I could say to ease his mind.

Q. Who are the parties here in Chicago, besides yourself, most active in prosecuting the defendants in this suit? Give their names.

A. What do you mean by saying I am active in prosecuting?

Q. I only take your word.

A. I haven't said I was active in prosecuting, I think; if I have it must go.

Q. I simply repeat the question.

A. I say I am not active in prosecuting them. The fact that you call me up as a witness, & keep me here three or four days—I don't
524 see that that amounts to a prosecution of them.

Q. I repeat, who are the parties here in Chicago, beside yourself, most active in prosecuting the defendants in this suit; give their names?

A. I don't know any one in Chicago who has anything to do with them; I believe I can't recollect at present any one except his counsel. I think I don't know any other person here.

Q. Did you ever know any other person here?

A. I don't remember now.

Q. What parties have you talked with about this case beside the complainants & their counsel?

A. What time do you refer to?

Q. I don't care when—any time?

(Objected to as immaterial.)

A. I think I talked with Mr. Harvey about it. No, not about the suit now; it is necessary to distinguish these. Mr. Harvey talked to me about this matter, I think—& by the way that enables me to say, I believe, that it was in April, 1867, that I talked with him; I talked with him about that sale at that time, & he has talked about it since this suit was begun. He started the conversation, I believe, in each case himself.

Q. Who else did you talk with beside the complainants & their counsel about this case?

A. I don't think I remember any one else except Mr. Philpott, the other day.

Q. Where does he live?

525 A. His office is on Dearborn st.

Q. In this city?

A. Yes.

Q. Did you talk with anybody else?

A. I don't remember to have talked with anybody else, & with Mr. Philpott only a few words was said; he commenced the conversation. It was commenced, I think, by his saying something. I forget how he did mention it, but we said very few words.

Q. Did Mr. Kerfoot, in 1863, know which land belonged to you, & which to Judge Hopkins, in the Pryor & Hopkins addition?

A. I doubt whether, without examining the deed, he would have known. I should not have known myself for a long time there when the lands lay so quiet—no sales—no applications; I really had quite forgotten the matter myself, so that I had a vague impression in the spring of 1867 that I owned 60 acres in the parcel; that shows how the matter had got, through long disuse, in my mind. I presume he could not have known which belonged to me or Judge Hopkins without examining the deed.

Q. After you arrived here last spring in May, that is, after you had the conversation with Mr. Walker, in New York; did Mr. Derby commence talking with you, or talk with you about the sale of the
526 west half of block 8, Pryor & Hopkins' subdivision, & if he did, did he bring about that sale?

A. Yes, he brought about that sale.

Q. Had Mr. Derby at that time just closed up a sale to W'm H. Rice, of the east half of block 8, for you?

A. No. I thought you referred to the Rice, oh no; he made the sale to Mr. Rice, the west half—no, the east half. It was the east half of block 8.

Q. He had closed that up?

A. That he had closed up; yes.

Q. Had he not sent you $10,000 in cash, & three notes of $10,000 each, secured by deed of trust therefor, prior to your coming out here in May?

A. He sent me $9,000; I think he kept the commissions—about $9,000 in cash, & sent the deeds & notes; yes, & that was all very satisfactory.

Q. It was, eh?

A. Yes, sir.

Q. Did you not advise Mr. Derby in making out deeds of trust for you in those sales, to insert the names of Franklin M. Ketcham & W'm M. Derby as trustees?

A. I don't remember who the second was, but Franklin M. Ketcham I think I did. I don't remember about Mr. Derby; if his name is there, it must be with my approbation, I presume; I don't remember about that.

527 Q. While corresponding with Mr. Derby, did he intimate to you that he could sell the W. ½ of block 8?

A. I think he did.

Q. State if you thought favorably of selling those lands, which Mr. Derby was writing about?

A. He tried to get me to sell the W. ½ of block 8 when I was here in May, & there was some talk—I couldn't say negotiations exactly—some talk about selling it to a certain party. I asked $40,000 for it, & refused to take anything less. When I went home, Mr. Derby wrote to me that parties with whom I had been talking or with whom he had been talking for me—I think he wrote that they would not give the $40,000; that they would give $38,000 & something—I don't remember now what it was, & I replied that I wouldn't take less than $40,000; I think that is my recollection; at all events, it wasn't sold until August, I think, when it was sold for $40,000; he sold it for me.

Q. He did sell it?

A. Yes.

Q. When did he write you about making a sale of this?

A. I can't say; I don't remember now; it must have been after I went home from this city.

Q. Anything about asking you to sell it, or whether you would sell it or not? I mean previous to the sale.

A. I don't know that he wrote to me about it before I was out here; I saw him when I was here, & after that we had some correspondence.

Q. Did you think favorably of selling those lands which Mr. Derby was writing about?

528 A. Yes; I thought favorably of it.

Q. You were anxious to sell.

A. No, no; I don't say I was anxious, but I thought favorably of selling. I thought it was a good price, & I was willing to sell at that price, but I think I should not present myself fairly to say I was anxious; I think I was not anxious.

Q. Before you came from New York, in the spring of 1869, were you

not aware that Mr. Derby was about to leave this city, or to be absent from it for some little time?

A. I think he did write to me that he expected to go to Washington City.

Q. Then you were aware of that fact?

A. I don't remember when that was written, or how long before I came out here. I don't remember anything about that.

Q. Now, since you were aware of that fact, Mr. Pryor, was it not your wish that he might not leave Chicago until you reached here?

(Objected to as entirely immaterial.)

A. I don't remember about that.

Q. Didn't you express that desire to him by letter?

A. Perhaps I did; I don't remember; very probably I did. I think I got more information from Mr. Derby, & more satisfactory talk with Mr. Derby, when I came out here, than with any other man I ever met in Chicago, about real estate; & I think very likely, therefore, that I said I would be very glad if he would be here when I came out;
529 that, I thought, probably. I talked with Mr. Derby a great deal more, infinitely more than with anybody else, while I was here, & I think I got more information from him.

Q. Did Mr. Harvey make you any offer for the land that you owned in Pryor & Hopkins' addition, in the spring of 1867?

A. I think I can say confidently that he did not; but if he did, I think it was $1,000 that he offered; but it is a very vague impression on my mind altogether.

Q. You think it was $1,000?

A. I think, if he made me an offer—but the whole thing is very vague on my recollection; then I don't think that any portion was specified if it was offered.

Q. What makes you think that it was $1,000 that he offered you?

A. I can hardly say. I have got the notion in my mind, in some way, in connection with Mr. Harvey. Whether he made me the offer at that time, or wrote me an offer in New York, I don't know.

Q. When you were here in July, 1868, trying to sell your land, do you say you put a block of your lands in Loomis, Potwin & Smith's office for sale, did you not?

A. Yes.

Q. Did you sell it?

A. Not through them.

Q. Did you also have some blocks in Kerfoot & Co.'s office, for sale at that time?

A. Yes.

Q. Were you, or did you talk at that time with Mr. W'm
530 Whitehouse, in regard to making sale of some of your lands?

A. I think I did.

Q. Did you sell any of those lands in 1868?

A. Yes; sold block 7.

Q. Any other?

A. In 1868? Yes; I think I sold part of block 9 in 1868.

Q. Through whom did you make these sales?

A. Through Mr. Kerfoot, I think.

Q. Through Mr. Kerfoot?

A. Block 7 was through Mr. Derby, & block 9 through Mr. Kerfoot. I remember, I think, when I was examined before, to have stated that the sales were made in block 9, were made by Mr. Kerfoot—were made last December & January. I was thinking of this being 1869. I

wish that corrected by putting it in December, 1868, & January, 1869.

Q. Is it not a fact that all the land you have ever sold in Chicago since 1867, has either been sold to Mr. Derby or through him, except the $23,000 worth, or about that amount?

A. I think so.

Q. Now, sir, I will ask you further, if Mr. Derby was not rather a good man in an emergency of that kind?

A. I don't exactly know what you mean about being a good man in an emergency; there was no emergency in my case, whatever. Mr. Derby was, I think, a very active man; a wide-awake, active, energetic person, & a most capable man to make sales.

531 Q. What I mean, is, if a man wanted to sell his land, Mr. Derby was the most likely man, either to buy himself, or to find some one who would buy?

A. I don't know about the most likely. I say he was a very energetic, capable, efficient man to sell land.

Q. Did you find any one more likely?

A. I think not.

Q. Did you find any as likely?

A. As far as I was acquainted, I should say he was a most efficient man.

Q. It seems, from your statements, that Mr. Derby has sold for you property amounting to $111,900, or thereabouts; is that not the fact.

A. I believe it is.

Q. It further seems that while he sold this land for you, all other parties only sold about $43,000, a portion of which was to him—sold to Mr. Derby.

A. Yes; I believe that is correct.

Q. Now, I will ask you further, is it not a fact that Mr. Derby was the only man that you did find, when you were here, who could influence a sale, or buy himself?

A. What time?

Q. When you were making the sale of your lands—any time.

A. I think not. I think not, because I was offerred $5 00 a foot more for the ½ of block 7 after it was sold, & Kerfoot wrote to me after that that he could have sold block 7 for $35,000 while I was here.

532 Q. My question is, Mr. Pryor, if it be not a fact that Mr. Derby was the only man that you did find while you were here, who could influence a sale, or buy himself; not what you could, but what you did find.

A. I offerred no lands for sale after April, 1867, I believe, until July, 1868, when I made an offer of block 7 through the office of Loomis, Potwin & Smith, & through Kerfoot & Co., &, I believe, those are the only offers I have made of real estate since that time. The sales that were made for me by Mr. Derby were made upon his application to me, & I admit that they were well sold, & I am satisfied with them; that is, block 8, his last sale.

Q. How many Michigan-avenue fronts did Mr. Derby buy of you in the sale of 14¾ acres?

A. I think he bought two.

Q. Just look at the map of Pryor & Hopkins' addition.

A. I won't swear to any fact in memory, positively; that I won't do.

Q. State how many Michigan-avenue fronts there were in that 14¾ tract which he bought of you?

A. As I understand it, there were two; I can make nothing else out

of it, sir, (after examining the map.) I believe I sold him three Michigan-avenue fronts; I forget about——

By Mr. HILL: Block 6?

A. Yes.

Q. You regard the Michigan-avenue fronts more valuable than any other portion of that tract, do you not?

533 A. Yes.

Q. How many Michigan-avenue fronts did Mr. Derby get in the land which he purchased from Mr. Walker?

A. One, I think.

Q. When you came out here, about from the 6th to the 9th of April, 1867, is it not a fact that you came here with the intention to stay awhile, & try the market, & make the best sale you could of your lands?

A. I don't remember that I had any definite views about trying the market, or making any sales, except not to sell until the park matter was settled. I don't remember to have had any settled purpose previous to the park vote as to what I would do afterwards, but, as soon as the park vote was settled, I intended to go home at once.

Q. Upon reflection, was it not your intention to try the market—make the best sale you could?

A. I think not; I think not. My best impression is that I intended to go home immediately after the park matter was settled.

Q. Did you not intend to make inquiry—look around & see what you could best do, & make sale if you could?

A. I think not.

Q. You say that you came out here with the avowed intention not to sell until the park matter was settled; & immediately afterwards you say that it was your intention to go home without selling. Now, what was your intention of coming out here at all if you didn't intend to make a sale?

534 A. I came out here to be here at the time the vote should be had upon the park, with strong resolutions not to sell until the park matter should be settled; with no fixed purpose. I don't know that I had thought even what I should do if the park matter should fail; but, as soon as the park matter did fail, I resolved to go home, & only staid here upon Mr. Derby proposing a negotiation for those lots.

Q. Had you any intention as to what you should do, or fixed purpose as to what you should do, in case the park question was decided favorably to your views?

A. No, I had not. I think I should have waited sometime, then, to see, because I expected a large advance on the property on that vote.

Q. About the time you came out here in 1868, what was your opinion as to the value of your lands?

A. I didn't come out here in April, 1868.

Q. What was your opinion as to the value of your lands in 1868?

A. I have no recollection at all as to what my opinion was at that time?

Q. About how much?

A. No; I have no recollection. I can give you no answer to that, because I can name no sum.

Q. What was your opinion as to their value before you did come out?

A. I don't remember, at all, anything about it.

Q. What do you think you would have taken for them?

A. I have not the slightest recollection. I am sure I have no

535 idea what I would have taken.

Q. Mr. Walker, the complainant, in his testimony, swears that you had informed him that you were dissatisfied, or had hard feelings towards Mr. Kerfoot, & had withdrawn your patronage from him entirely on account of that.

A. I don't remember to have made any such statement to Mr. Walker, & don't think I did; & if I stated that I had withdrawn my business from him, then I stated what was not true, because I had not.

Q. I understand you to say that those lands, Mr. Pryor, in Pryor & Hopkins' addition, have always been pets of yours?

A. Yes.

Q. How was it in 1867, after the defeat of the park bill, when you say you were depressed & dissatisfied in regard to them—disgusted with them?

A. I didn't say I was disgusted with the lands.

Q. Were they pets of yours at that time?

A. They were—yes.

Q. As much as ever?

A. Not as much as they are now.

Q. I understand you to say, or convey the idea, that you hadn't been doing anything to try to work up this case in favor of Mr. Walker & the other complainants?

A. Well, what is your question?

Q. I simply ask you now whether I understood you correctly?

536 A. What do you mean by working up? State the question.

Q. Have you been doing anything to aid the complainants in this suit?

A. Well, yes; I went to see Mr. Towne, if you call that aiding the complainants. I went to see Mr. Towne on my own account entirely, so I could see whether my recollection of what he had said to me was correct; that was the purpose for which I went to see Mr. Towne, & that was the only purpose, I think, for which I went.

Q. Is that all you have done to aid the complainants in this suit?

A. That is all I have done, I think, except looking at some law.

Q. Are you retained in this suit?

A. I am not.

J. W. PRYOR.

537 *Deposition of L. W. Stone.*

DERBY
v.
WALKER.

Deposition of LEWIS W. STONE, March 23rd, 1870.

538 Q. Please state your name, age, residence, & occupation.

A. Lewis W. Stone; I was born in 1816.

Q. Residence & occupation?

A. Real estate business.

Q. Residence?

A. I am living in Hyde Park?

Q. Whereabouts in Hyde Park?

A. 43rd st. & Michigan avenue.

Q. Place of business?

A. My place of business is 152 Madison st.

Q. Chicago?

A. Yes, sir.

Q. How long have you been engaged in the real-estate business in Chicago?

A. On & off 15 years; not all the time; about 12 years, probably, I have been in the business. There was two or three years I didn't do anything at it.

Q. Are you acquainted with the location & value of the premises colored red on this map, marked Exhibit D?

A. Section 3, 38, 14?

Q. Yes.

A. This is Pryor & Hopkins' subdivision. Yes; I am somewhat acquainted with that.

Q. Have you dealt in property near there?

A. I have.

Q. Did you make sale in March, 1867, of property in that section? If so, please state what property it was.

539 (Objected to.)

A. 1867? I think I did make a sale of four acres, or 4⅓—a trifle over 4.

Q. Please state where it was located, the purchaser, & the price paid?

A. It was located on 44th st., on State, Wabash, & Michigan.

Q. The purchaser & price?

A. The purchaser was Mr. Gould.

Q. W'm G. Gould?

A. W'm G., I think; I think that is his name. Paid $1,000 an acre.

Q. What terms?

A. All cash.

Q. How far south from the city limits was that land?

A. It was nearly ¾ of a mile; between a half a mile & three-quarters—a little over a half mile.

Q. On the 1st of March, 1867, what was the value—the market value of the property colored red, say, the east half of blocks 1 & 6, all of blocks 4 & 5, the north 100 feet of block 12, in Pryor & Hopkins' subdivision, section 3, 38, 14?

A. What time did you ask; at the time I sold that—about that time?

Q. Yes. In the 1st of March, 1867, an undivided half of those 20 acres, in the N. E. ¼ of section 4; the value per acre, or in all?

A. That land in block 1, block 6 & 5, & the east half of 4, I should think was worth $1,800 an acre. The west half of block 4, an

540 undivided 20 acres of section 4, that west of State st., was worth about $1,000 an acre—$1,000 an acre. There is that difference. That on the west of State was not near as salable as that east at that time; in fact, it was hard to sell property in there. That was something near what I should think the property was worth at that time.

Q. Were the Rock Island car works inaugurated—projected before that time?

(Objected to.)

A. I won't be certain. I think they were commenced. I don't think the building was commenced then; I won't be certain about that.

Q. Do you know when those works were projected?

(Objected to.)

A. When they were built?

Q. When they were projected; when it became a matter of public notoriety?

A. It was that year some time, 1867—1867; it was some time in that year.

Q. Not as to when they were built, but as to when they were projected; when the Rock Island Company determined to build them, & when it was known in Chicago here that they would be built?

A. I think in the fall of 1866 we knew of it; 1867, I think, they were built; that is my impression. I may be wrong about it. I haven't got any minutes here.

Q. State whether, prior to March, 1867, you communicated with S. H. Kerfoot & Co. with regard to the purchasing of any land in

541 Pryor & Hopkins' subdivision, & the particulars.

A. I did in 1866, I think. I had a party who wanted to purchase 40 or 60 acres then, & went to Mr. Kerfoot to see what it could be got for. Mr. Kerfoot said he wrote to Mr. Pryor. I told him I had a party who would pay $1,200 an acre for that; that was in the south part of the Pryor tract, too—south end of the Prior tract, the poorest part of it.

Q. The poorest part of it?

A. Yes, sir.

Q. When you speak of the Pryor tract, do you mean—

A. I mean the 80 acres subdivision.

Q. The whole subdivision?

A. The whole subdivision. That was as much as a year before I made that sale.

Q. To Mr. Gould?

A. To Mr. Gould.

Q. Did you have any further communications with Kerfoot & Co. about land?

A. All, at that time, that I had he gave me to understand that Mr. Pryor would not sell it. I did not see the letters he got from Mr. Pryor. He said he got letters from Mr. Pryor on the subject, but he never showed them to me. He said that Mr. Pryor wouldn't sell it, & so I gave it up.

Q. How came you to go to Kerfoot & Co. & inquire about this?

A. Because I knew Mr. Kerfoot was paying Mr. Pryor's taxes. That is why I went to him.

542 Q. Did Kerfoot & Co., in March, 1867, let you know that the property was for sale, or any property in Pryor's subdivision?

A. I never heard of it—of there being any there for sale.

Q. Were you here at the time?

A. Yes, sir.

Q. Please state what is the custom in making sale of block property by the acre, as to counting in the streets in the area. Please state what is the custom in selling block property by the acre.

(Objected to.)

A. It is customary always to sell to the middle of the streets—the centre of the streets.

Q. To include the streets in the sale?

A. To include the streets in the sale.

Q. Are you acquainted with the customary rate of interest reserved on real estate sales in 1867?

(Objected to.)

A. If there was nothing said, it was 6 per cent. Property sold at 8 per cent.

Q. What was the average rate of interest—the usual rate? What were the usual terms of sale?

(Objected to.)

A. At that time I guess there was more interest at 6 per cent. than any other. It is different now—more at 8.

Q. What difference would there be between a sale for *a* cash & a sale ⅓ cash, the balance 1, 2, & 3 years, with interest at 6 per cent., with the price attainable in March, 1867?

(Objected to.)

543 A. What would be—you ask me what would be the difference an acre?

Q. Yes, percentage; what difference—what percentage or difference would it make?

A. At the time—1867—property would sell considerably higher where it sold on time; nearly a quarter, I should think.

Q. Was any of this property so low—such a slough—as to seriously affect its market value?

(Objected to.)

A. The west half of block 4 was considerably low at that time. We had some ditches dug there, that has drained it since, so it is not so bad now. Some of these here, (indicating on the map.) What do you call that?

Q. Some of that in section 4.

By Mr. McKINNON. Just state on which side of State st. that is, so that they will know.

A. West of State st.

Q. Was any of it so low as not to be capable of perfect drainage?

A. They have drained it since.

Q. Can you fix the time closely as to when you went to see Mr. Kerfoot about this land—about land in this subdivision?

A. I can't without referring to my books. I don't know as I could get at it then?

Q. 1866, you said?

A. I think it was in 1866.

544 Q. How many interviews did you have with him?

A. Two or three—three, I think.

Q. Please state what you said & what Mr. Kerfoot said, as far as you remember.

(Objected to.)

A. It is so long ago that it wouldn't be possible for me to say what he did say, hardly. I went to him to see whether or not Mr. Pryor would sell it, & to get the price—what he would sell it for, & he didn't know. He said he would write to Mr. Pryor & find out, & let me know at once.

Q. Told you that he had written to Mr. Pryor?

A. He did, & said he had received a letter from him. After two or three weeks I dropped in, & he said he had received a letter from him, and said he would not sell.

Q. How long before you made the sale spoken of to Mr. Gould, that you had this conversation with Mr. Kerfoot?

A. I am thinking it was the previous year—the year before the sale.

Q. You know it was before?

A. Before the sale? Yes, sir.

By Mr. McKINNON. Before your sale?

A. Yes.

Q. How long have you resided where you do now?

A. 8 years.

Q. How long have you been familiar with this subdivision—this Pryor & Hopkins' subdivision?

545 A. 12 or 14 years. I have owned land south of there 12 or 14 years.

Q. What was the value of that property in the summer of 1866—in June, 1866?

(Objected to.)

A. What was the value of this property—what are you speaking of, this, (indicating?)

Q. Yes.

A. In 1866?

Q. Per acre, taking it as acre property?

A. $1,200, I guess.

Cross-examination waived.

L. W. STONE.

546 *Deposition of U. P. Smith.*

DERBY *vs.* WALKER.

Deposition of U. P. Smith. March 23, 1870.

547 Q. Please state your name, age, residence, & occupation?

A. My name is U. P. Smith; upwards of 21 years of age; lawyer by profession; residence in the city of Chicago.

Q. Have you purchased property in the vicinity of Pryor & Hopkins' subdivision, in the W. ½ of section 3, 38, 14?

(Objected to as irrelevant & incompetent.)

A. I purchased property in the E. ½ of the S. W. ¼ of section 34, cornering on Indiana ave. & Egan ave.

Q. Section 34, what town & range?

A. 39, 14.

Q. Please state when, & at what price, & the amount of land.

(Objected to as incompetent and irrelevant.)

A. I bought 5 acres there in 1866, in the fall—in October, I think; Sept. or Oct., 1866. Did you ask me the price?

Q. Yes, sir.

A. I agreed to give $2,000 an acre.

Q. $2,000?

A. Payable $1,000 down, $1,000 in a year, & the balance in 5 years, with interest at 8 per cent. per annum.

Q. Are you acquainted with the value of the property marked in red in that plat, marked Exhibit D?

(Objected to.)

A. Now?

Q. 1867, in March?

A. I will have to state just what I know & what I don't know about that. This 5 acres that I bought was the only land I ever pur-

548 chased in the vicinity, & I can only state as to the value of the land anywhere about there by judging approximately upon the basis at which I held mine at that time. That was the next March after I bought it. I don't remember whether or not there was any advance in real estate in that vicinity between the time I purchased & March, 1867.

Q. I want your estimate as to the value.

A. Of this land, this marked in red?

Q. Yes, you can describe it by blocks, if you like. The east half of blocks 1 & 6, all of blocks 4 & 5.

A. Well, put the question so that I can understand it.

Q. The question is all down.

By Mr. McKinnon:

Q. Do you know where these lands are situate?

A. Yes.

Q. They are west of State st., you mean?

A. Well, there is ten acres west of State st. Do you want me to give the value of these lands, taken as a lump, in March, 1867, by the acre?

Q. Yes, I do.

A. I have no knowledge of its value at that time, except as I judge from what I considered my land in the vicinity worth at the date. I don't think that the land referred to was as valuable as the piece I purchased, taking it all together.

Q. In your opinion, what was that land worth?

A. In my opinion, from the best information I have on the subject, I should think this land, taken all together, at that time might have
549 been worth in the neighborhood of from $1,200 to $1,500 per acre.

Cross-examination waived.

U. P. SMITH.

550 *Deposition of A. J. Averill.*

WALKER
v.
DERBY.

Deposition of A. J. Averill. March 24, '70.

551 1 q. State your name, residence, and occupation?

A. My name is A. J. Averill; age, 46 years; residence, Chicago; occupation, real-estate agent.

2 q. How long have you been in that business in Chicago?

A. About seven years, I think—seven or eight.

3 q. Did you, in the winter of 1866–'67, have your attention directed in any way to property in Pryor & Hopkins' subdivision of the west half of the northwest quarter of section 3, 38, 14, being the east half of blocks 1 and 6, and blocks 4 and 5; and also an undivided 10 acres adjoining said subdivision west of State street, about 30 or 31 acres? If so, please state the circumstances.

A. I was dealing considerable with Mr. Martin Andrews. I sold him some property, I think, adjoining this on the east. He was talking about this property in my office a number of times, and he stated to me something about this lot, and pointed it out; but I cannot designate the blocks exactly. It was something like 30-odd acres that he had made a proposition for, and wanted to know what I thought of it. He said he had offered a thousand dollars an acre for it. I told him I would like to join him in it—in the purchase of it. He wanted to know how high I would go. I told him as high as $1,200. He didn't give me any encouragement that he would let me in in the purchase, but he said he had offered $1,000, and I offered to go in with him, and would have gone in as high as $1,200. I know he came in and talked to me

about the property because I had been dealing with him. I sold
552 him a store, I think, about that time.

4 q. Please state what was the value of that property in March, 1867, in your judgment?

A. I would have been willing to have bought it at $1,200; that was as high as anything that had been sold there at that time, according to my judgment.

5 q. In selling block property by the acre, state what the custom as to the including the street in the measurement of the acre.

A. We generally in selling a ten-acre block, for instance, that includes the street, they pay so much an acre, including all the streets to the centre of the streets.

6 q. Has your valuation of $1,200 an acre been upon that basis?

A. Yes, sir.

7 q. Do you when it was first publicly announced, in the city of Chicago, that the Rock Island car works would make improvements, if any, in that vicinity?

A. No, sir; I can't designate the time.

8 q. Can you fix the time exactly, or fix it as near as possible when Mr. Andrews had this conversation with you in regard to this property?

A. I think it was somewhere along about March, I should say. It was early in the spring, I know.

9 q. Early in the spring of 1867?

A. Yes, sir.

10 q. Was there any decline in property from May, 1866, to March, 1867, in that subdivision or that vicinity?

A. No, sir; I should say not. I sold this property, 33⅓ acres,
553 December or November, 1865, running from here, from this point, say to Kankakee avenue, for $500 an acre. I think it was December, 1865. In June, 1867, or July, I bought the southeast corner, which is the poorest part of the tract, and I paid $1,200 for it. I bought it back of Andrews. I sold it to him for Mr. Walter S. Gurney. I will say it is two-thirds of the south half of the forty acres lying east of the south part of this plat.

11 q. You were here when the park vote was taken in 1867.

A. Yes, sir.

12 q. What effect, if any, had that on the values of property in that vicinity?

A. I think it enhanced the value.

13 q. After the defeat of the park, what effect did that have?

A. The property kept right on.

14 q. Irrespective of the park vote?

A. Yes, sir.

15 q. It seemed to make no appreciable difference in the value?

A. There was a general rise in property.

16 q. State the causes of the rise in property from the time you sold Anderson that property until June, 1867.

A. I don't know as I can state the causes. There was a general enhanced value all over the country, not only here but other cities. There was speculation in property, and it has been going up until this
554 time, or within a few months. This property down here, I should say, nearly doubled in 1868. Property that was bought a year ago last spring, would sell for nearly double; would sell last spring for nearly double what it sold for a year before.

17 q. Was there that same appreciation from June, 1866, to June, 1867?

A. I don't think it was as much. No, sir; it was a speculation and hadn't got to its height. There was a gradual advance, I think.

18 q. Has property declined there from the figures it has been sold at at any time since June, 1866?

A. Yes, sir.

19 q. It has declined?

A. Yes, sir; you asked me from the figures it has been sold for since June, 1866. I say there has been some decline from last year's prices.

20 q. But there was no decline from June, 1866, *to* until June, 1867?

A. No, sir; I should say not.

21 q. Are you familiar with the sales in that section?

A. Yes, sir; have handled considerable of it.

22 q. How long have you been acquainted with Martin Andrews?

A. Since 1865—the fall of 1865—when I made this negotiation with him; this 33⅓ acres. I think it was November or December. I can tell by the books exactly. That was my first acquaintance.

23 q. Do you know anything about his responsibility?

A. No, sir; I regarded him as responsible—thoroughly so.

555 24 q. Do you know how much he is worth?

A. No, sir.

25 q. Did you know anything about his responsibility in March, 1867?

A. He came well represented to me, and always fulfilled all of his engagements promptly. I sold him a store on Michigan avenue, I think for $56,000; I think it was the winter of 1866-'67. He made negotiations with me and talked of buying the corner of Washington and Franklin streets, and afterwards bought on Lasalle, where Andrews' block is. He bought further south, I think where the west park now is located. I sold half of that tract for him, as agent—40 acres to Mr. Busby.

26 q. Are you acquainted with the surface of that property?

A. Yes, sir.

27 q. That subdivision?

A. Yes, sir.

28 q. With the land west of State st.?

A. Yes, sir.

29 q. There is a twenty-acre tract west of State st.?

A. Yes, sir.

30 q. Through which the cattle-yard railroad track runs? What are the comparative values of these tracts—the east half of block 1, the east half of block 6, and blocks 4 and 5, as compared with each other, and with this tract west of State st.?

A. I should think it was worth double the tract west of State st.

31 q. Which?

556 A. Take the average of this property.

32 q. Was that the difference in 1867?

A. I think it held good in 1867.

33 q. Is it the same now?

A. I think so.

34 q. It has kept right along?

A. I should rather have it at double price of the other.

35 q. What is your opinion of the east half of block 1 in March, 1867?

A. That property had a speculated value. I don't know as I could designate what the block would have been worth at that time. People were not buying by the lot, but buying generally by the acre.

36 q. Take it by the acre, the east half of block 1, and the east half of block 6, and blocks 4 and 5?

A. I don't think there was any particular difference. I think block 5 would have been worth more to me than east half of block 1 and 6, or 4.

37 q. What was the value in 1867, in your opinion, of those, take it altogether?

A. I say $1,200 an acre, according to my opinion. No man can fix exactly the value of property.

557 Cross-examination by Mr. McKinnon:

38 q. In your estimate of $1,200, I understand that to be more of a speculation than real value?

A. I don't think there was any established value; one man would pay for one lot, and another for another; that would fix the value for the other lots, but there was nothing of that kind at that time.

39 q. Was there any real value to those lots you have been speaking about in Pryor & Hopkins' addition in March, 1867—established value—other than speculative?

A. Nothing but speculative value. There is no value for the immediate wants, as I understand it; it was from the location of the property being adjacent to the city.

40 q. As a speculation?

A. As a speculation.

41 q. In your estimate of $1,200, did you include the ten acres on the west side of State street?

A. I did.

42 q. You think that was worth $1,200 an acre?

A. No, sir; not separately, at that time—not separate from this.

43 q. Even as a speculation at that time what would that have been worth alone, west of State, aside from the other?

A. I find the value of this property from the attention being called to it at that time. I fixed it from the value I had on my mind at that time. I made up my mind that as a speculation, I was willing to
558 join him at $1,200 an acre; outside of that I could not say?

44 q. Give us your best opinion of what the ten acres west of State street were worth at that time, even as a speculation, without reference to what it has become since?

A. I should have to put it at that time at about $800 an acre, that west of State street.

45 q. Supposing that ten acres west of State street to be an undivided half of twenty acres, would your estimate be the same?

A. Yes, sir.

46 q. The values that you have put upon all this property, I understand you to say, are not real but speculative?

A. Speculative, I mean to say; I think I stated I thought this was worth double the other.

47 q. How did this compare with the property that you sold to Andrews the year before?

A. This is better property.

48 q. Do you remember of any sales being made of this property, or any in that vicinity at that time in March, 1867?

A. No, sir.

49 q. Was there much demand for it?
A. No, sir.

ALBERT J. AVERILL.

(Endorsed:) Filed April 13, 1870. W'm H. Bradley, cl'k.

559 Be it remembered that, on application of the defendants in a suit now pending in the United States circuit court for the northern district of Illinois, wherein John J. Walker et als. are complainants, and W'm M. Derby et als. are defendants, I, S. W. Burnham, United States com'r for the nor. dist. Ill., have, on the days hereinafter mentioned, A. D. 1870, at the office of Monroe & McKinnon, in the city of Chicago, and State aforesaid, pursuant to agreement of counsel, proceeded to examine Joseph L. Lombard, E. C. Cleaver, H. E. Picket, Joel D. Harvey, John S. Wallace, & F. H. Winston, as witnesses on behalf of the defendants in the aforesaid suit.—Mess. Monroe & McKinnon appearing before me on the part of the defendants, and Edward J. Hill, esq., on behalf of the complainants; and I do further certify that the said witnesses being by me carefully examined, cautioned, and duly sworn to testify the whole truth, deposes and says:

WALKER ET AL.
vs.
DERBY ET AL.
} April 25th, 1870.

Direct. Cross.
Deposition of Josiah L. Lombard..... 1 5

560 *Dep. of J. L. Lombard.*

1 q. What is your name, age, place of residence, and occupation?
A. My name is Josiah L. Lombard; I am 36 years of age; reside in Chicago, and am a lawyer by profession.
2 q. In what business, and where, were you engaged in March, 1867.
A. In March, 1867? I was dealing in land principally then—dealing in real estate in Chicago, and about Chicago; that was my principal occupation.
3 q. Are you acquainted, and were you in March, 1867, with one James W. Pryor, of New York City?
A. I had seen him at that time.
4 q. Are you acquainted with the premises south of the south division of the city of Chicago, and south of the southern limits of said city, know as Pryor & Hopkins' subdivision?
A. I am.
5 q. Were you in March, 1867?
A. I was.
6 q. State, if you know, who was then the owner or owners of that subdivision?
A. Well, considerable part of it was claimed by Pryor. That is all I know. I don't know whether he owned it or not. I supposed he did.
7 q. Have you had any conversation with Mr. Pryor in regard
561 to the sale or purchase of any portion of that subdivision? if so, please state when such conversation was had; where; and give the conversation as fully as you can.
A. I couldn't remember when the conversation took place. It took place at what was then my office, at No. 78, La Salle st., but I don't remember what was said, only that Mr. Pryor offered to sell, and talked

as though he wanted to sell, and talked about the price that we would give for certain blocks and lots in that subdivision. He pretended he wanted to sell it. I know it was about that time. I don't recollect the dates exactly.

8 q. Did you, in March, 1867, or previously thereto, own any lands south of the Prior and Hopkins' subdivision?

A. Yes, sir; I owned some.

9 q. Where was it with reference to the Prior and Hopkins' subdivision?

A. It was just south of the east part of the Pryor and Hopkins' subdivision, that is of the part east of State st. That was immediately adjoining the city limits, and ran south to the extent of the eighty acres, and mine commenced just one mile south of the city limits.

10 q. When did you purchase that property?

A. Will you allow me to refer to my book?

(After referring to book,) January 9th, 1867.

11 q. That is when you bought, sir?

562 A. Yes, sir.

12 q. What did you pay for it then, per acre?

A. It was estimated at about $350 to $400. I will explain why I am not able to tell the exact amount. There were certain incumbrances that I had to assume, that were mixed up on the whole 40 acres. It amounted to between $350 and $400—nearly $400, I should say.

13 q. What would that land sell for in March, 1867?

A. I was offering it at about that time for money, for $600, and in trade at $800 an acre.

14 q. Did you find a ready sale for it?

A. I didn't.

15 q. How did it compare in value with Pryor and Hopkins' subdivision?

A. Well, it was worth more than that west of State st., that part of it; and it was worth I suppose—in the general market it would be considered as worth very nearly as much as that east of State st. It would depend on whom you wanted to sell it to, somewhat.

16 q. Was there much land down there in March, 1867, for sale?

A. Yes, sir; there was considerable to sell.

17 q. Any quantity, I suppose?

A. O, a large amount of it.

18 q. Did it have any real fixed value at that time, in March, 1867, or was it speculative?

(Objected to as to form.)

563 A. Well, I think you couldn't say that there was any fixed value. There was a great difference, probably in the opinions of people. It was only a certain class of people that I could find that would buy down there.

Cross-examination by Mr. Hill:

1 q. What was the description of the land which you owned in that vicinity—in what section was it?

A. In sec. 10—in the N. W. of the N. W. of the N. W. of 10, I believe.

2 q. How was the land then bounded and how now bounded?

A. On the north by 47th st. on the east by Wabash av., on the south by 49th st., and on the west by State st.

3 q. Some distance south of Pryor and Hopkins' subdivision?

A. I believe there is half a mile between them.

4 q. Between the south boundary of Pryor and Hopkins' subdivision and the northern boundary of yours?

A. Yes, sir.

5 q. Do you know J. D. Harvey, of this city?

A. Yes, sir.

6 q. Was he present when you had your conversation with Mr. Pryor, in regard to that property?

564 A. Yes, sir; I think he was generally. I don't remember absolutely.

7 q. Your attention was called to this land by Mr. Harvey, was it not?

A. Yes, sir.

8 q. He proposed to buy with you, didn't he?

A. Yes, sir. I think he made such a proposition to me at one time.

9 q. And about what price did you propose to give at that time?

A. We only talked of buying some certain blocks, or one block, I think it was, east of State st. I think it was the block bounded by Michigan and Wabash ave's—one of those blocks. He told me he thought it could be bought for $1,000 and acre, if I remember right. I didn't buy it.

10 q. Did you have much conversation with Mr. Pryor in regard to the matter?

A. Not a great deal with Mr. Pryor. I talked with him a little once or twice.

11 q. Was the conversation with Mr. Pryor an offer on his part to sell, or was he soliciting an offer—was he fishing about to see if he could get an offer?

A. Well, my idea was, that he was going about seeing where he could get the biggest offer, and intending to take it. He talked as though he wanted to sell?

12 q. Did you make him an offer?

A. No, sir; I didn't. I concluded I didn't want to give $1,000

565 for it. It might, perhaps, be worth it. It was a time when nobody knew whether land was going up or down there, and I concluded I would not buy any more.

13 q. Do you know what particularly called your attention to land in that vicinity in January, 1867?

A. Yes, sir; Mr. Harvey tried to sell me this ten acres for some time, and other lots about there, and I knew that the Rock Island shops were going to be located there, although it was not generally known.

14 q. It was known among real-estate men?

A. Not generally, I think, at that time—no.

15 q. In January?

A. I don't think it was until a little while before they commenced. There were rumors of that sort. I think nobody knew it but a very few.

16 q. Were there any improvements going on in that vicinity at that time?

A. Nothing that I considered would increase the value.

17 q. The Rock Island car shops being about to be located in there led you to buy there?

A. Yes, sir. The Rock Island people were buying.

18 q. That was known down there?

A. No; I think not generally. It was kept rather secret.

19 q. Mr. Harvey knew it?

A. Yes, sir. He was their agent in buying. He bought for them.

566 20 q. Were you familiar with the prices of land in that vicinity at the time you purchased, and subsequently?

A. Yes, sir; at the time I purchased I made myself familiar by inquiry.

21 q. When you say that you think the value was not fixed, you don't mean to say that the land had no intrinsic value?

A. Well, no. I mean to say more like this, that people who were very ready to buy it, those that knew anything about the shops going there, when they got it down very low, $300 or 400 an acre—that is what Whinston and Blodgett, who bought considerable down there, bought a great portion of theirs at—but when you come to raise up on a bigger price, then the purchasers were rather shy, I think, because I tried to sell my own.

22 q. You predicate the value of your land because it was nearer the railroad shops than that in Pryor and Hopkins' subdivision?

A. I remember talking at that time about that land in this way, and I made up my mind that although that was somewhat nearer the city, that mine, being right opposite the car shops, where they were to be at that time, made up about the difference of the distance—made them very near equal.

23 q. What is the value of your land now?

567 A. I suppose it would retail at $50 a foot. It has been a little higher than that.

24 q. How much an acre would that be?

A. $9,000 an acre—180 f't in an acre.

25 q. Well, land has all increased in about the same ratio from the time you bought?

A. I think the Pryor and Hopkins' subdivision has increased more. There has been a great many improvements around there. Since I bought, Michigan and Wabash ave's have been opened.

26 q. Wasn't it known it was to be opened?

A. I don't think it was. I didn't understand it so.

27 q. How about the trotting park?

A. Well, now, I couldn't be positive whether Mr. Wentworth—I think it was not until next August that Mr. Wentworth laid out his subdivision. I am not positive, though. It was either the August before or the August after. I think it was the August after. That opened all the country around there. For a little while my lot would sell for more than Pryor and Hopkins' subdivision—for a little while afterwards.

28 q. Were you interested in any way in the lands of the railroad company, either Wisconsin or otherwise?

A. No, sir.

29 q. How many interviews did you have with Mr. Pryor?

A. Well, that I couldn't tell you. My remembrance of the interview with Mr. Pryor is very indistinct. I remember his coming in

568 then, and remember him talking then, and concluded I didn't want to buy.

30. q. Was there any offer to sell on his part and any price named?

A. I don't remember any, sir; there might have been.

31 q. What effect, if any, had the prospect of a park in that vicinity, which was voted on in April, 1867, upon the value of the lands?

A. Well, it had the effect to call attention that way, and occasion considerable talk, but, I think, at that time, it hadn't made a big real advance—made no permanent thing so that you could take right hold and

put your lands in the market, and get your money for them, like you can now. That is my recollection of it.

32 q. Do you remember the park vote?

A. O, yes.

32 q. In the spring of 1867?

A. Yes, sir.

34 q. Did that have any material effect upon the values in that vicinity—the defeat of the park?

A. No, sir; property kept rising, I tried to sell mine, being afraid it would be defeated; that is why I made some exertions to sell mine, thinking it might go down, perhaps, if that were defeated, but to my astonishment it kept rising all the time; I was a little surprised at that.

35 q. Were you then, and are you now, as familiar with the surface of Prior & Hopkins' subdivision?

569 A. I am, somewhat, with some blocks, more particularly those east of State street.

36 q. How was it with that part on State street; was that high or low land?

A. Well, I am not familiar with that west of State st.; I know there is not any very high land there, and I don't think there are any swamps; there is some east of State st. that is swampy in that subdivision.

37 q. Much of it?

A. Some Wabash-av. fronts, and State-st. fronts; one block there, I think, that is considerably flat; in fact, I know one block that I went to examine, to buy, I found swampy.

38 q. What effect had that slough or swamp?

A. At that time it probably had considerable more than it would now.

39 q. About how much difference?

A. Well, it would make more this difference than anything else—a man would not buy the block that was swampy, but would go over and buy the block that is high; part of the subdivision was high land.

40 q. What was the relative value of blocks on State st. and Indiana av.?

A. At that time?

41 q. Yes, sir; taking the State-st. front.

A. You mean taking the whole of State-st. and Wabash-av.

570 fronts—running through—and Indiana av.?

42 q. Yes, sir; the Indiana av. would front east; the division is bounded by Indiana av.—now take the corresponding one, fronting west.

A. What part of the Pryor and Hopkins' subdivision?

43 q. The upper portion

A. North of the railroad?

44 q. Yes, sir.

A. I don't think there was a great deal of difference at that time?

45 q. It was all held as acre property at that time?

A. Yes, sir.

46 q. In buying that as acre property, it was bought for the purpose of speculation—to sell in lots and blocks—that would be the purpose for which persons would buy?

A. People buying, would think that improvements would make a general rise, and then would sell it again; that is what I bought it for.

47 q. Do you know anything about the property purchased in that vicinity by W'm G. Gould?

A. No, sir, I don't think I do; perhaps if you were to call my attention to the lot I might recall it.

48 q. Or by Martin Andrews?
A. I did know that Andrews bought some, but I forget what it was; I think his was east of Indiana av.
571 49 q. Yes, it was.
A. Some twenty acres in there, he bought.
50 q. Do you know anything of the property purchased by Mr. Winston, near yours?
A. Yes, sir; all about that.
51 q. How did yours compare in value with that?
A. Well, about equal to it; Mine is abreast of the shops.
52 q. You still own yours?
A. No, sir.
53 q. Sold it all?
A. Yes, sir; all I had at that time.

JOSIAH L. LOMBARD.

572 *Dep. of E. C. Cleaver.*

DERBY
v.
WALKER.

Deposition of Edward C. Cleaver. March 29, 1870.

By Mr. McKinnon:
Q. What is your name?
A. Edward C. Cleaver.
Q. Your age, occupation, & residence?
A. Age, 39; real-estate broker; I live now on the corner of 33d st. & Michigan avenue.
Q. How long have you been engaged in the business of real-estate brokerage?
A. I have been in it, sir, about 12 or 13 years.
Q. At what place have you been so engaged during that time?
A. Office, do you mean?
Q. No, in what city or place—I mean what town, place?
573 A. In Chicago.
Q. Are you acquainted with the lands in the south division south of the city limits of Chicago, known as Pryor & Hopkins' subdivision?
A. I am, sir.
Q. Were you acquainted with those lands in the year 1867; in March 1867?
A. I was, sir.
Q. Do you know at that time the marketable value of those lands, if they had any such value?
A. Well, sir, there wasn't any of those lands, or any lands sold at all there for a number of years, until Mr. Derby purchased at that time. The only way to judge would be to judge the price he paid.
Q. Did they have any marketable value before that time that you knew of?
A. No, sir; there was nothing selling?
Q. Do you know the tract of land which Mr. Derby purchased in March, 1867, of John J. Walker as a portion of the Hopkins estate, lying partly in Pryor & Hopkins' subdivision, and partly west of State st.?
A. Yes, sir; I went down with Mr. Derby to look at it,

574 Q. Before he purchased or after?
A. No; after he purchased.
Q. Then you were shown at that time what he did purchase?
A. Yes, sir.
Q. State, if you can, what portion of that purchase lay west of State st.?
A. Mr. Derby told me, I think, sir, there was 10 acres, if I remember right.
(Answer objected to.)
Q. What was the marketable value of the land—I mean the entire tract of land which Mr. Derby at that time purchased from the complainant Walker as part of the Hopkins estate, if any such value it had? or, in other words, what, in your judgment, was it worth at that time—in March, the early part of March, 1867?
A. The land lying west of State st., sir, there was no sale for at all. I should judge that that land was worth at that time, if there was any value for it at all, $500 or $600 an acre. That is the high ground, if I remember correctly; there was part of that ground that was a slough,
575 but the high ground, I should think, would be worth $500 or $600 an acre. But there was nothing selling in that part of the town at all.
Q. Take the thing as a whole, west & east of State st., what, in your judgment, was the land which he purchased of Mr. Walker at that time worth? I mean the fair value for it, if any such there was?
A. I should think, sir, the high ground——
Q. Taken all together I mean, Mr. Cleaver?
A. Well, altogether I should think it was worth about from—I should think from $700 to $900, as Mr. Pickett has stated. I think he got it about right, if there was any sale for it at all.
Q. You were at that time acquainted, or have since been acquainted, with the lands owned by Mr. Pryor, in that Pryor & Hopkins subdivision, were you not? I mean the lands which Mr. Derby purchased of Mr. Pryor.
A. Yes, sir; I am acquainted with them.
Q. What was the relative value of the two tracts, taken as whole tracts, the one which Mr. Derby purchased of Mr. Pryor, and the one which he purchased of Mr. Walker, about which you have given testimony?
576 A. Well, sir, if I remember correctly, the property that he bought of Mr. Pryor was almost all of it on Michigan avenue. The Michigan-avenue property is worth twice as much as the Indiana, & at that time certainly three times as much as State st.
Q. Did you, in the summer or year 1867, purchase any lands in section 10, between Indiana avenue & Kankakee?
A. I think I did, sir, purchase ten acres.
Q. It adjoined this Pryor & Hopkins?
A. No, sir; south.
Q. At what price did you purchase that ten acres?
A. I paid $350 an acre for it, sir.
Q. How did those 10 acres which you so purchased compare with the lands which Mr. Derby purchased of Mr. Walker as a whole—I mean the portion east & west of State st., taken as a whole—the whole tract?
A. Well, sir, I always liked the land over there on Kankakee avenue, which is the street I purchased upon, & immediately in the vicinity of H. O. Stone's residence. I always supposed it was worth more than the land laying over there in that slough, as we then used to call it,
577 pretty near the slough. It was pretty wet over there.

Q. What slough do you mean?

A. Well, there was a big slough, sir, on Indiana avenue, up there. I think it must have been somewhere pretty near Egan avenue, or south of that; & then there was a big slough somewhere over on State st.—somewhere by Wabash avenue—somewhere by the railroad crossing there. It was pretty wet over there, all around.

Q. Was that in the land that Mr. Derby purchased of Mr. Walker?

A. It was pretty near to it, if it was not right in it. It was pretty wet all around there in those days. In fact there was no way of getting down to that property. There was no street leading down to it except Indiana avenue, & that was a perfect slough, & the only way to get to the property Mr. Derby purchased was to go down the Vincennes road, & cross over.

Q. Did you purchase any lands of Governor Wells?

A. I purchased 40 acres.

Q. Where was that situated?

578 A. That was that run from Indiana avenue over east of Vincennes road.

Q. East of Vincennes road?

A. Yes, sir; right through the timber.

Q. It runs up on the high land?

A. Yes, sir; most all of it. Two-thirds of it always considered the prettiest 40 acres down there; everybody said so.

Q. When did you purchase it?

A. I think a little before Mr. Derby purchased his lands, if I remember correctly.

Q. What did you pay for it?

A. I paid $400 an acre, on time.

Q. On what terms did you purchase it?

A. I paid $2,000 cash, $2,000 in 6 months, & the balance in one, two—the balance of $12,000 in, I think, run for 3 years, if I remember correctly.

Q. At what rate of interest?

A. At 6 per cent. I think it was.

Q. How did that land compare with the Walker lands which Mr. Derby purchased?

A. Everybody supposed, at that time, it was worth about three or four times as much. I guess it is worth fully as much to-day, if not a little more.

Q. Did you sell any portion of that land in 1867?

579 A. I think it was in 1867, sir, that I sold the east portion of it—the east 20 acres. I subdivided it into 5 & 10 acre blocks, & I sold the east 10 acres—the 10 acres on the east side of the Vincennes road, to Mr. Godwin, for $600 an acre.

Q. Did you think you were sacrificing anything by selling it at that price?

A. No, sir; I was very anxious to sell. I tried to sell all the time, five or six months afterward. I sold the next 5 acres directly on the opposite side of the street that now adjoins Mr. Asa's residence, between Kankakee avenue and Vincennes road. I sold for $625 an acre.

Q. How did these two tracts compare in value with the land which Mr. Derby purchased of Mr. Walker at that time?

. I should judge that anybody buying at that time would give me three times as much as the lands over on State st., or Wabash avenue, or Michigan either, would bring.

Q. Was there any streets extended through Wabash & Michigan avenue across this Pryor & Hopkins' subdivision in 1867?

580 A. Years before that, sir; there had been some streets thrown up; I think thrown up in about 1858 or 1857, if I remember right; but at that time that Mr. Derby purchased, they were all grown over; but there was no streets north of that at all.

Q. None north of it?

A. No; there was, when you got out on Douglas place, there was a race track from there down to 30th st. I guess it was 32nd.

Cross-examination by Mr. Hill:

Q. How far south of this Pryor & Hopkins' subdivision was this 40 acres that you purchased?

A. I think it is about—I think there is two ten-acre tracts laying between.

By Mr. McKINNON. You mean south or west?

A. I think south. I think there is Pryor & Hopkins' subdivision reached down to Mason st., and there was two ten-acre tracts between two blocks.

Q. Pryor & Hopkins' subdivision is bounded on the south by 43rd st., ins't it?

A. Yes, sir; I think it is. Is that what they call Mason—no,

581 Trumbull st.? Yes, sir.

Q. About how many streets below that are you?

A. There is one street; I guess I am on the next street. I was on 45th st.; I fronted north on 45th st., all the way across the 40-acre tract.

Q. It is in section 10?

A. Yes, sir; mine was in section three.

E. C. CLEAVER.

582 *Dep. of Henry E. Pickett.*

DERBY
v.
WALKER.

Deposition of Henry E. Pickett. Tuesday, March 20, 1870.

Q. What is your name, age, residence, & occupation?

A. Henry E. Picket; I am about 32—will be in a few days.

Q. Occupation?

A. I am engaged in the real-estate business here, sir.

Q. Place of residence?

A. Chicago; I don't live in the city of Chicago either—I live just outside of the city limits at the present time.

Q. But your place of business is in the city?

A. Yes, sir.

583 Q. How long have you been engaged in the real-estate business in this city?

A. My first operation in the real estate was the early part of 1865—commenced in 1865.

Q. You are acquainted with property in the south division of the city, are you not, sir; outside of the city limits?

A. Yes, sir; to some extent.

Q. Are you acquainted with the character & value of the subdivision known as the Pryor & Hopkins' subdivision, south portion of the city?

A. Yes, sir.

Q. Were you acquainted with the character & value of that property in the year 1867?

A. To some extent; not so well acquainted with it as I am now; but still I was somewhat acquainted with it.

Q. Are you acquainted with the character & value of the property which Mr. Derby, the defendant here, purchased of John J. Walker, known as the Walker estate property?

A. Yes, sir.

Q. Part of which is contained in the Pryor & Hopkins' subdivision & another part west of State st.?

584 A. Yes, sir.

Q. Were you acquainted with the value of that property in March, 1867?

A. To some extent.

Q. This is a map, a plat showing the Pryor and Hopkins' subdivision & also showing a portion of the property which Mr. Derby purchased of Mr. Walker as a part of the estate of *Nathan* F. Hopkins?

A. I recognize the plat.

Q. Do you know the *piscis* of property on that plat which Mr. Derby purchased of Mr. Walker?

A. Yes, sir; I think I can name them.

Q. Will you please to name the pieces or describe them so that the reporter may take it down?

A. I think Mr. Derby purchased from Mr. Walker the estate of Hopkins—the east half of 1, the east half of six—that is blocks I am naming now—the whole of block 4 & the whole of block 5.

Q. Did he purchase any lots?

A. Yes, sir; I think there was some more. There was some more in block 12, I think 4 lots in block 12. The north end of block 12 commences at the corner of 42nd st.

Q. In that purchase, was there any other property than what
585 you have already described?

A. Yes, sir; I understand there was some west of State st.

Q. How much was west of State st.?

A. I have always supposed there was in the neighborhood of 20 acres in that tract, of which he bought an undivided half; I never knew exactly what the area was, but that's my idea.

Q. What was the value, the marketable value, if the property had any such value, in March, 1867, which Mr. Derby purchased of Mr. Walker?

A. My idea would be, sir, that it could hardly be said to have a marketable value at that time. There was a great deal of land, as I understood it, in that country, with more sellers than buyers.

Q. What would you estimate its value at that time, either a speculative or marketable, as you might consider it, taken as a whole?

A. These lands were reckoned in those times by the acre; we didn't consider measurement by front feet then; but I should say that it depended some upon how a man wanted to sell; but if a man wanted to sell right off in a hurry, I should say if he could get from $700
586 to $900 an acre, he was getting all it was worth at that time; that would be my understanding of it.

Q. What would you consider the value of the property so purchased by Mr. Derby of Mr. Walker in Pryor & Hopkins' subdivision, as compared with the property west of State st.; I mean what difference in value was there, or will you estimate there to have been?

A. I should consider there is a great deal of difference in value—always has been, in my judgment.

Q. In March, 1867?

A. I should think that east of State st. was worth from two to three times as much as that west of State st.; that would be my judgment about it; certainly twice.

Q. The value which you have placed upon the purchase made by Mr. Derby of Mr. Walker—I will ask you whether that is a speculative or actual value?

A. Well, sir, I think the value was altogether speculative at that time; I don't know of any purpose it was wanted for; there was no building there of any extent; the value depended entirely upon what might come out of it in the future, as I understand it.

587 Q. Do you know of any sales having been made in Pryor & Hopkins' subdivision in 1866 or 1867, prior to this sale to Mr. Derby?

A. The first sales I knew anything about there, was the sales made to Mr. Derby; they were sales I heard of at the time; I didn't know Mr. Derby, but those were the only sales I knew anything about there at that time.

Q. State if you know what sales, if any, were made in that subdivision in March or April, 1867, & for what price per acre?

A. I only know of sales made by the Hopkins estate, & by Mr. Pryor himself, both of which were made by Mr. Derby. I suppose about that time I got that information from the abstracts that I have, of the property belonging to me in the same subdivision; now that is the only way in which I could designate the time; but I suppose that will be correct.

Q. Do you know one James W. Pryor, of the city of New York?

A. I do.

Q. Is he the Mr. Pryor known as being one of the owners of the Pryor & Hopkins subdivision?

588 A. Yes, sir, he is one of the men; he is the Mr. Pryor mentioned, I suppose, in this subdivision.

Q. What kind of a real-estate operator is Mr. Pryor, or was he at that time?

A. I didn't know him at that time; I have since known him.

Q. From your knowledge of him since?

A. I consider him a shrewd man, sir; a very shrewd real-estate dealer; that is my idea of his capacity.

(Question & answer objected to as immaterial & irrelevant.)

Q. I understand you to say that Mr. Derby purchased some land in that subdivision of Mr. Pryor?

A. Yes, sir.

Q. State how much; what quantity he purchased.

A. I have not figured the quantity up in acres, sir; I can state, I think, the portions of the block that were purchased, & by a very little figuring I can tell what it amounts to in acres. He purchased the W. ½ of block 1, the W. ½ of block 6, the whole of block 2, from Mr. Pryor; lots 9, 10, 11, & 12 in block 3, in addition to what I have mentioned.

Q. How was that property situated?

A. This property was all in Pryor & Hopkins' subdivision, east of State st.

589 Q. Will you please state if you know the relative value of the land which Mr. Derby so purchased of Mr. Pryor, as compared

with lands which he purchased of Mr. Walker in 1867. I mean in March, 1867?

A. I should consider the lands, the Pryor lands, much more valuable than the Walker lands, for two reasons: the first of it is, all the Pryor lands lay in this Pryor & Hopkins subdivision, on what we consider these main thoroughfares leading down to the city, what we have always considered very valuable property on these streets, compared with the other; & in the second place, I think it more favorably located than the Hopkins property—more valuable.

Q. What thoroughfares do you refer to?

A. I mean Michigan and Wabash avenues.

Q. You say you consider it more favorably located; will you please state fully what you mean by that?

A. I mean that, in the first place, we consider the Michigan ave. property the best, worth the most money; there was a large portion of this laying in that street; we consider Indiana ave. perhaps worth the least money. There was considerable of the Hopkins property lay upon that street, & none of the Pryor property.

590 Q. No Pryor property?

A. The Pryor property being all upon Michigan avenue, that would be my understanding of it.

Q. How much of this Pryor property purchased by Mr. Derby lay upon Michigan avenue?

A. Well, sir, there must have been—do you want I should give that in?

Q. The fronts.

A. There were the fronts of 3 blocks fronting on Michigan avenue.

Q. How much of the Hopkins' estate purchased by Mr. Derby fronted on Michigan avenue?

A. The front of one block.

Q. Of one block?

A. Yes, sir.

Q. Now, please to give me the relative value of the two tracts purchased by Mr. Derby—one from Mr. Pryor, & the other from the Hopkins estate.

A. I should consider the Pryor property worth twice as much as the Hopkins property, including that west of State st.

Q. I wish you to fix—

A. I mean property per acre. That's what I mean.

591 Q. I wish you to fix, if you please, the value of the Pryor property which Mr. Derby purchased in March, 1867, & so to fix the value, & compare the same with that purchased of Mr. Walker by Mr. Derby at the same time?

A. The Walker property I have already stated, in my judgment, if it sold for $700 to $900, it would be sold for a good price—it would be considered a good price. I should think, in my judgment, the other property is well worth $1,400 or $1,500, as that would be $700 to $900. That would be my judgment. I think at the present time there is more difference than that in its value.

Q. Do you know whether Mr. Derby has been instrumental in, or caused improvements to be made on these lands which he purchased of Mr. Pryor, or in the vicinity of those lands?

A. Yes, sir; I know that he has been instrumental in making improvements there.

(Question & answer objected to as immaterial.)

Q. State, if you can, about the value of those improvements.

A. In the aggregate do you want I should state?

Q. Yes, sir.

592 A. I should say Mr. Derby had caused to be erected upon this Pryor & Hopkins' property improvements to the value of $100,000. Upon some lands adjacent thereto, he has been instrumental in causing improvements to the extent of $25,000 to $40,000 that I know of. I don't know just what price, of course. I know something about what these improvements cost upon this land.

Q. Were those lands improved at the time of the purchase thereof by Mr. Derby?

A. No, sir.

Q. What was their character at that time as to improvements?

A. They were what we call, I think, wild prairie lands.

Cross-examination by Mr. Hill:

Q. You are one of the defendants named in this suit, are you not?

A. I believe I am.

Q. You are the owner of a portion of the premises?

A. Yes, sir.

Q. What portion?

A. I own a part of block one in this subdivision.

Q. What part of block one?

A. Well, sir, I own the south eight lots.

Q. The south eight lots of——

593 A. Block one, running across from Michigan avenue to Indiana avenue.

Q. Four lots on Michigan and four lots on Indiana ave?

A. Yes, sir. I also own some in block five.

Q. What part of block five?

A. At least, I have not got the title yet. The south five lots of block five, numbered 13, 14, 15, 16, and 17.

Q. Have you made any improvements on those tracts?

A. I have made improvements on a portion of block one.

Q. What improvements?

A. A dwelling-house and barn; planted some trees, etc.; and I now reside there.

Q. Is that inside the city limits now, or outside?

A. No, sir; it is not. It is outside.

Q. The city limits are Egan avenue?

A. The next street north is the city boundary.

Q. Egan avenue?

A. The first street north of my house.

Q. That is the southern boundary of the city now?

A. Yes, sir.

Q. Of whom did you purchase those lands?

A. Of Mr. Derby; that is, part of block one.

Q. When did you take title?

594 A. The abstract shows here. I can't tell you exactly—some time during the past month, when I got the deed.

Q. Please find it on the abstract?

A. I held it by contract since the 12th day of September, 1868, and recorded the 7th day of February, 1870.

Q. Have you paid for the whole of the lots?

A. No, sir; I have not.

Q. What have you paid, and what is there yet due?

A. I have paid the interest of the principal money since the 12th of September, 1868.

Q. How long have you been in possession of it?
A. Since that time, or about that time.
Q. Of the lots in block one?
A. Yes, sir. Block five I never have had possession. Have got no title to them yet.
Q. How many lots in block five?
A. Five lots.
Q. Name them.
A. Thirteen, fourteen, fifteen, sixteen, and seventeen.
Q. Have you paid for those?
A. No, sir; I didn't buy those lots, as I stated before, from Mr. Derby. I bought them from another party; contracted for them, at least. I don't say I bought them.
Q. Bought them of Mr. Rawson?
595 A. No, sir; bought them of Mr. Honore.
Q. What is this paper that you have looked at here; this document (indicating?)
A. This purports to be an abstract of these lots in Pryor and Hopkins' subdivison.
Q. How long have you been acquainted with this subdivision, or the lots there?
A. I have been somewhat acquainted with them, I suppose, since the latter part 1865 or '66. I knew nothing about these previous to 1865. I can't state when my earliest acquaintance began.
Q. Mr. Philpot; has he been a partner of yours?
A. Yes, sir; he has been; he isn't now.
Q. Did you buy these lots in copartnership?
A. We bought them in block one jointly, and not the part I have mentioned. The part purchased by him was another portion still.
Q. When did you purchase that property?
A. I have already stated that—the 12th of September, 1868?
Q. What did you pay per acre?
A. Well, sir, I don't know that I am able to state. We bought, three of us, that block, jointly, for which we paid or agreed to pay
596 $70,000, and three of us divided the block up.
Q. What are the names of those other two persons?
A. Mr. Philpot and Mr. Hall—Winchester.
Q. Mr. Winchester Hall?
A. Yes, sir.
Q. Do you know the number of acres in that block?
A. Six and two-thirds acres as I understand.
Q. Including or excluding the streets?
A. We always measure to the centre of the streets. It is a common custom in measuring these lots by the acre to the centre of the streets, as I understand. It has always been my custom at least.

HENRY E. PICKET.

597 *Dep. of J. D. Harvey.*

WALKER
v.
DERBY.

Deposition of Joel D. Harvey. March 29th, 1870.

By Mr. McKinnon:
Q. What is your name, age, residence, & occupation?

A. Joel D. Harvey; age, 33 years. I reside in the city of Chicago, & my occupation is that of real-estate & loan broker.

Q. How long have you been engaged in that business in the city of Chicago.

A. A little over six years.

Q. Are you acquainted with the property south of the south limits of the south division of Chicago, known as the Pryor & Hopkins' subdivision?

A. I am.

Q. Were you acquainted with the character & value of that property in March, 1867.

598 A. I was.

Q. Do you know one James W. Pryor, of the city of New York, and did you know him in March or April, 1867.

A. I do know him, & became acquainted with him first in March—the latter part of March, 1867.

Q. Do you know whether in March or April, 1867, he was the owner of any property in Pryor & Hopkins' subdivision referred to?

A. I know that he claimed to own property there at that time.

Q. How did you become acquainted with Mr. Pryor?

A. I first wrote to him at New York with reference to his property in Chicago, before I saw him, & in March—I think it was the latter part of March—before the vote on the park bill at least—he came out here & called upon me.

Q. When he came out here, you say, he called to see you.

A. He did.

599 Q. Did he, at that time, solicit offers for land or desire to sell it?

A. I had written to him with reference to selling his land; that was my object in writing to him, & when he came here he called upon me with reference to selling his land—talked about selling it.

Q. Did you make any effort to sell it for him?

A. I did, sir.

Q. What success did you have, Mr. Harvey, in that respect?

A. I didn't succeed in selling any of it.

Q. Do you know of Mr. Pryor selling any land to Mr. Derby in the spring of 1867.

A. I saw a conveyance of land from Mr. Pryor to Mr. Derby, I think, in the spring of 1867.

Q. If you can state where the lands described in that conveyance were located, please do so.

A. I can't give the number of the block, but they were part of Pryor & Hopkins' subdivision, south of Egan avenue.

600 Q. Were they the same or a portion of the same lands which Mr. Pryor desired you to sell for him.

A. They were.

Q. What were the best offers which you were able to obtain for those lands of Mr. Pryor's when you made the effort to sell them for him in the spring of 1867?

A. The best offer that I think I had, that I remember I had, was $1,200 an acre, for that part lying north of the railroad—the stock yard track.

Q. Lying north of the railroad?

A. Yes, sir.

Q. Whom did you offer those lands to, Mr. Harvey?

A. I remember Mr. Winston, Mr. J. L. Lombard, and a gentleman by

the name of Rusk—I think it is George Rusk, connected with the "Times"—others besides those; I can remember none of them.

Q. What Mr. Winston do you refer to?

A. F. H. Winston.

Q. The attorney?

A. Yes, sir.

Q. Mr. Blodgett's former partner, I suppose?

A. Yes, sir.

601 Q. Did you have an offer from Mr. Winston for those lands of Mr. Pryor's, which you say you offered?

A. Not as much as that; he wasn't—didn't think there was any money in them at the price that the other party offered.

Q. Did you have an offer from Mr. Lombard; if so, what offer?

A. Mr. Lombard didn't offer really but $1,000 an acre; he would have given, though, the $1,200; he only made the offer of $1,000.

Q. What was Mr. Winston's estimate of the value of the lands which you so offered him at that time?

(Objected to.)

Q. By that I mean how much was he willing to pay?

A. I think—my recollection is—that he considered them worth about $1,000—the price the Stock Yard Co. had paid for, when *he* bought there of Mr. Pryor.

Q. Are you, & were you, in March & April, 1867, acquainted with the property which Mr. Derby bought of John J. Walker, as part of

602 the Hopkins' estate, situated partly in Pryor & Hopkins' subdivision, and partly west of State st.?

A. I was, in a general way, with all the property in that neighborhood.

Q. The property to which I refer is the east half of block one, the east half of block 6, all of block 5, and all of block 4, and an undivided half of 20 acres, west of State st.; do you know that property?

A. I do; I did know it.

Q. Taken as a whole, how did it compare in value, in March, 1867, with that property which Mr. Derby bought of Mr. Pryor, in Pryor & Hopkins' subdivision?

A. It was not as good, taken as a whole.

Cross-examination by Mr. Hill:

Q. Mr. Harvey, what time in March, 1867, did you see Mr. Pryor here?

A. I wouldn't be positive that it was in March, as I stated

603 in my answer; it was a little while before the park vote was taken; it may have been the last of March, or the first of April.

Q. How long before that did you write to Mr. Pryor?

A. I am not positive; I think I had written to him two or three times, perhaps.

Q. Have you a copy of those letters?

A. No, I don't think I have; I have not looked to see. I usually keep only copies of letters relating to money matters, receipts, & remittances of money—something of that kind.

Q. What was the nature of that correspondence with Mr. Pryor?

A. It happened talking with Mr. Winston about property. We sold some we owned in the stock yard; he spoke of Mr. Pryor's owning some there. We were walking past there one day in the fall of 1866, I think, and he having some desirable property there, I thought it would

be a good plan to write to him with reference to it, just as real
604 estate men are doing all the time, here in Chicago.

Q. Do you say that Mr. Pryor authorized you to sell this property?

A. No, sir.

Q. He didn't authorize you to sell property?

A. No, sir.

Q. Now what did Mr. Pryor say when he was in your office?

A. The exact language it would be impossible for me to give?

Q. Please give it in substance?

A. He was in the office, I should judge, a half a dozen times, talking about his property, &c., & wanted to get offers. I found it very difficult to get him to fix a figure on it. He wanted the offer to come from the other side, and he said that he would sell some of it if he could get a satisfactory offer. That is what I was working to get for him—offers from responsible parties. I was interested to some extent in one or two offers that were made.

Q. Were you interested on behalf of the purchasers in the offers?

A. Yes, sir.

605 Q. You were not acting in any way as the agent of Mr. Pryor in selling these; merely as buyer?

A. The same as I would for any other man. I expected to get a commission if I sold it. I should have bought some myself if I could have got it at figures that were satisfactory to me.

Q. With which one of those persons that you have named were you interested, Mr. Harvey?

A. Mr. Lombard & I had bought & sold property together, & he was officing with me at the time.

Q. Mr. Lombard was officing with you?

A. Yes, sir.

Q. How was it with Mr. Winston?

A. I have never had any interest with any of his except on commission.

Q. Of Mr. Rusk?

A. Nothing with him?

Q. What was the value of the land on Michigan avenue in block one & two?

A. That's north of the railroad. At what time?

606 Q. In March or April, 1867?

A. It would to take out those two fronts. It would be worth block one & two; it would be worth a little more than the whole block Indiana avenue. That's the cream of it, as we consider—worth perhaps—oh, I presume I could have $100 an acre more, just taking those two sides right out—those two front blocks—than I could to have taken a couple of blocks right through.

Redirect examination by Mr. McKinnon:

Q. Was there, in point of fact, any other than a speculative value to all that property, in March, 1867. I mean was there any real value in it other than speculative; a real fixed value?

A. No, sir; there was no real value to it; it was entirely speculative at that time. It is very hard to realize at this time the condition that land was in at that time—all that land south of the city. I had purchased large tracts for the Tracy and Winston interest in the
607 Rock Island road, & the shops there previous to that time, &

had been all through that property south of the limits. We bought there very cheap; had our own prices the fall of 1866 & 1867.

Q. Then there was no real fixed value to the thing at all, was there? It was merely speculative?

A. No, sir; there was no fixed value as I stated. It was entirely speculative, & we would get the best offer we could.

Recross examination by Mr. Hill:

Q. Allow me to ask you one further question. Did you know any part or portion of that subdivision was for sale before Mr. Pryor was here?

A. Except the land that he owned I didn't know that any of it was for sale until after it had been sold, I think.

Q. How came you to know of it then?

608 A. Mr. Winston told me, I think, some gentleman from Mobile was here, an acquaintance of his representing some estate, who had just sold quite a tract there through Mr. Kerfoot.

J. D. HARVEY.

609 *Dep. of J. S. Wallace.*

WALKER *vs.* DERBY.

Deposition of John S. Wallace. April 1st, 1870.

1 q. What is your name, age, occupation, and place of residence?

A. John S. Wallace; 58 years old the first day of last November; I reside at 793, Wabash avenue, in the city of Chicago; my occupation is mixed. I have heen in the lumber business, and I am now collecting rents and paying debts, and sometimes sell a little real estate, and sometimes buy it.

2 q. How long have you lived in the city of Chicago?

A. I have made this my home direct since 1853, constant.

3 q. During that time have you bought, owned, and sold any real estate in Chicago or in Cook County?

610 A. Yes, sir.

4 q. Are you acquainted with the defendant William Derby?

A. I am.

5 q. How long have you been acquainted with Mr. Derby?

A. I have been personally acquainted with him since 1861—intimately acquainted with him.

6 q. Have you ever owned any property in Chicago, or in the vicinity thereof jointly with Mr. Derby?

A. I have, sir.

7 q. What amount of property and where was the same situated that you so owned?

A. 100 feet on Wabash avenue by 202 on the corner of 29th and Wabash ave. I owned jointly with him and Mr. Monroe, I can't say it was exactly an equal interest, but very near it, 18½ acres, in section, (referring to a map,) section 13 on the Barry Point road.

8 q. By what name or designation is the property now known?

A. It is known and recorded as Derby and Wallace's subdivision.

9 q. Did you own any property and do you now own property
611 south of the south limits of the south division of the city of Chicago, in this county.

A. Yes, sir, I now own and have owned.

10 q. Do you know the property in Cook County described as Prior and Hopkins' subdivision of the W. ½ of the N. W. ¼ of section 3, town 38, range 14, E. of the 3rd principal meridian?

A. I think I do.

11 q. Do you know the property which Mr. Derby purchased of the complainant John J. Walker, in the spring of 1867, lying partly in that subdivision and partly west of State street?

A. I think I do. I know that part directly west of State street, and I think I know the other.

12 q. This is a map of Prior and Hopkins subdivision; here is Egan avenue. The property which Mr. Derby purchased, I understand to be the E. ½ of block 1, the E. ½ of block 6, all of block 5, block 4, and an undivided ten of twenty acres west of State street.

A. I know all that property, sir.

13 q. Did you know anything about Mr. Derby purchasing that property?

612 A. Yes, sir; he came to me and said that the property was offered him, and he was inclined to close the purchase or had partially closed it, or was about on that point.

14 q. Will you be kind enough to state for what purpose he came to you and what you said?

A. He came for the purpose of getting my opinion upon the property—that was the first of the interview; then it was remarked that he was about purchasing or could purchase it, but he hadn't as much money as he would like to have to do it; he wanted to have me take an interest in it with him; I inquired of him what his prices were, &c. I justified myself by saying that it might prove a good thing, but I thought it was rather wild. I viewed that the better investment for my money was inside; that was about my answer to him.

15 q. On what terms did he offer you an interest in the property?

A. If my memory serves me right he told me he was paying $800 an acre, taking the thing through. He showed it to me, and if my memory serves me right, I think that was it. I made no minutes of it to hold it. He located the property around to me. I gave my opinions

613 in the matter as to the different valuations of the locations that he showed to me.

16 q. And you declined to take an interest in it at $800, or about that price per acre?

A. Yes, sir.

17 q. You were the owner of some lands, were you not, in that vicinity previous to that time?

A. I was south of that.

18 q. How far south of it?

A. It was, I think, nearly three quarters of a mile south of it, that is in one direction, southeast. I was owning south and west of it and half a mile—not half a mile—from a quarter to a half a mile south, and probably half a mile west. No, not half a mile, but a quarter of a mile west.

19 q. Did you sell any portion of that property about March or April, 1867?

(Objected to.)

20 q. I mean the property which you owned south of this and east of it?

A. South and east of it I sold, I think it was, in the fall of 1866. I sold ten acres there.

21 q. At what price did you sell that; I mean what did you realize from it?

A. I think it was a shade over $400 an acre. I can't exactly give it, but it was a very little shade over $400 an acre.

614 22 q. Did that sale include your entire interest there?

A. No, sir; one-half my interest there. I had 20 acres there, and sold 10.

23 q. Do you still own the other 10 acres?

A. I have contracted that. I contracted it last . I can't give the month, but it was in the fall.

24 q. Last fall?

A. Last fall.

25 q. At what price did you contract the other 10 acres?

A. At $100,000, payable in five years, with the interest for two years and better, paid in advance, and an understanding, if any portion of it was condemned for the park, to apply upon interest as far as that condemnation went.

26 q. Was the 10 acres which you previously sold as good as the 10 acres which you sold for the $100,000?

A. Well, as to soil I think it was just as good.

27 q. How did the 10 acres which you first sold at about $400 an acre compare with this property which Mr. Derby purchased, taken as a whole—that west of State street and that east—I mean in value?

615 A. I looked at it in this light, that it was all anticipated—anticipated at that time, and I valued it, perhaps, a good ways forward. I didn't think there was a large difference in the value of the property.

28 q. Was there considerable property down there for sale in the spring of 1867?

A. Yes, sir; any amount of it.

29 q. It was not very well settled at that time, was it?

A. No, sir; it seemed as though it was a great ways back from the city, a great portion of that property which is now settled.

30 q. Do you remember about Mr. Derby purchasing any property from Mr. Pryor in this Pryor and Hopkins subdivision?

A. Some considerable length of time afterwards Mr. Derby came to me, and told me that Mr. Pryor had an interest in this same subdivision larger than the one he had purchased, and better located; he showed it to me upon the map. I agreed with him that it was. He told me how it could be purchased, and then solicited me to go in with him very strongly.

31 q. At what price did he state to you he could then purchase the Pryor portion?

616 A. There was a portion of it at $1,200 an acre; that was the highest part of it. I think there was some portion of it, if I mistake not, that was something under that; but the highest, best location that he pointed to me, my memory is, was $1,200. I think it is less than that. I think it was $24,000. He showed me an amount of property that was offered at $24,000, and he was anxious I should take hold of it, and buy it; and I think, without certain knowledge, that it was $1,200 an acre: but it was that body of property which I never did compute by the acre, but the amount that he showed me was at $24,000.

32 q. Did you join him in that purchase?

A. No, sir; I refused him.

33 q. Why did you do so?

A. I told him I thought it was as wild as the other, if not wilder.

34 q. Was there any sale, any stated price, or known fixed price for property down there in March, 1867?

A. I don't think there was. It was all a prospective value, speculative. Anything that was sold was prospective, and was for spec-
617 ulation. There was occasionally a piece of property sold, but a very little.

35 q. When Mr. Derby solicited you to go into the purchase of those pieces of property with him, how were you off for means—ready money, I mean?

A. At the time that he first purchased there I had between $50,000 & $75,000 in bank.

36 q. Then you were abundantly prepared to go into it if you thought there had been anything in it?

A. Yes, sir; it was not for the want of means.

37 q. And the reason why you did not go into it was, that you did not consider it a bargain?

A. Yes, sir. I gave several reasons.

38 q. Do you know whether Mr. Derby has been instrumental in the erection of any buildings in the vicinity or upon that subdivision, or other improvements?

(Objected to as immaterial.)

A. Yes, sir.

39 q. What do you estimate the value of those improvements at?

A. There is a good deal of it, and you would have to point out to me. It would take me some time to figure it, and I would have to make some inquiries. There are two blocks that improvements are made
618 upon: upon Egan avenue, or a little south of Egan avenue, that is very valuable; very good improvements. There is a house immediately in that vicinity, (referring to the map,) and then there is property down here that I am not so conversant with that I can give an estimate of that property. The property that is north of the railroad I could give a better idea of. This property down there, (pointing on the map,) for the last six or eight months, I have not been there only as casually, at a distance, I have observed it; but the property north of this railroad I have had a knowledge of, and looked at it, and been in it.

40 q. What do you estimate those improvements to be worth north of the railroad?

A. I don't think they could cost certainly less than $75,000—the houses.

41 q. There are other improvements, though, in that vicinity, the value of which you could not state?

A. I could not give the estimate. I am very well posted as to the estimate of those houses there, for I have been through them.

Cross-examination by Mr. Hill:

619 X 1 q. What was the value of that property on the west side that you owned with Mr. Derby, in March, 1867, per acre?

A. It was a good deal like this; had no real value; had no value only prospective, in 1867. We offered the 18½ acres there, during that time in market, at $18,000, a long time; at least we got no offers for it. Mr. Monroe had that authority from me, to sell my interest at that.

X 2 q. What interest had you?

A. I had an interest of, I think, somewhere close to six acres.

X 3 q. Mr. Monroe?

A. Mr. Monroe, I think, had an interest of somewhere between seven and eight acres.

X 4 q. Mr. Derby?

A Mr. Derby had an interest between four and five acres, if my memory serves me right.

X 5 q. Did you make any sales in March, April, May, or June, 1867?

A. No, sir. I sold in 1868 my interest there, one block of it, about five acres.

X 6 q. In 1868 was it?

A. In 1868, sir.

X 7 q. Who was that sold to?

A. Sold to Jackson.

620 X 8 q. There was a portion sold to John J. Walker, or Mrs. Walker, of Mobile?

A. Yes, sir.

X 9 q. Were you interested in that sale?

A. I was not. It was subdivided about that time that that sale was made.

X 10 q. Who owned that property at the time? Did Mr. Derby own that alone?

A. It was his division in it. The block was divided. I think that he had lots one, two, three, & four. In that sale he aided us in making our division, I think.

X 11 q. Made the division at that time?

A. Yes, I think the division was made at that time. It might have been talked a few days before that sale was made, but at the time, I think, was the time the division was made. I think I joined in the deed, but no interest in that part, because it was divided before we joined in the deed.

X 12 q. Do you know what the value of the property was at that time?

A. I do not, sir.

X 13 q. Had it any market value?

A. It was just as all other property was, occasionally changing, and it was a prospective and speculative value—speculative price. I
621 I had some other property on the west side, lying near the artesian well. I would offer it, but I could not get offers that suited me.

X 14 q. Are you personally acquainted with the value of this property in Pryor & Hopkins' subdivision?

A. I have traveled over it and been through it. I have been over that ground—traversed it since 1844.

X 15 q. How far south of this subdivision was your land that you sold?

A. It was fully three-quarters of a mile south; I should think so—from a half to three-quarters of a mile.

X 16 q. What time did you sell that 10 acres?

A. I cannot give the day of the month. It was in 1866, towards the fall.

X 17 q. You sold it for over $400 an acre at that time?

A. Yes, sir.

X 18 q. What effect, if any, had the vote upon the park down there that was defeated, upon the value of the property from March, 1866, to March, 1867?

A. I can't hardly say what effect it had. If the park bill had passed, or had been voted through, it might have advanced it largely, but property gradually advanced, I think, for a little time, and appeared to lessen the sales.

X 19 q. Was there any material effect upon the value?

A. Yes; I rather think so. There were some changes. It has been an impression upon the minds of men that I have conversed with
622 that we would have a park, and it would benefit it; and the improvement of itself was a stimulant to a great many to buy property there. Mr. Derby came in and commenced selling some property, probably half a mile below this property—may have been a little more.

X 20 q. Was he selling at the time he purchased this?

A. No, sir; I think it was a little after that—I don't know, before or after. I know he was selling at prices that perfectly astonished me, and I advised him frequently in the matter, as we had been very frequently in conversation with reference to the value or real estate. It was leading a class of men into the purchase that I thought they could never get out of, and he would eventually have to take the property back; but instead of that, to show you how my judgment was at that time, it still continued to advance. The sales he was then making were barely nothing in comparison with the other property around it.

JOHN S. WALLACE.

623 *Dep. of F. H. Winston.*

WALKER *vs.* DERBY.

Deposition of F. H. Winston. April 1st, 1870.

1 q. What is your name, age, occupation, and place of residence?

A. Frederick H. Winston; lawyer; 38; Chicago.

2 q. Do you know John J. Walker of Mobile, Alabama?

A. No, sir; I have met a Mr. Walker. I don't know whether it is the same one or not. I think I do; that is my impression. I never met him but once or twice.

3 q. Do you know James W. Pryor of New York?

A. Yes, sir.

4 q. Do you know the premises in Cook County described as Pryor & Hopkins' subdivision of the W. ½ of the N. W. ¼ of section 3, town. 38, range 14 east?

A. Yes, sir.

5 q. Did you have any talk with Mr. Walker in regard to any
624 interest which he represented in those premises or any portion of them?

A. I saw Mr. Walker I think once; I may have seen him twice; the interview that he had with me was at my office, with reference to the premises that you speak about and his ownership in them.

6 q. When was it?

A. I couldn't tell; it was before he had sold out, however.

7 q. Can you state the conversation that took place between you & him then?

A. No, sir; he was inquiring of me with reference to the value of the property in a general way, but I don't recollect anything definite about it.

8 q. Were you the owner of any property in the vicinity of the tract I have described, in March, 1867?

A. No, sir.

9 q. Previous to that time were you?

A. No, sir.

10 q. Subsequently?

A. Yes, sir; in October, 1867, I bought the adjoining 34 acres on the south, perhaps not quite adjoining, but very near it.

11 q. At what price?

A. $1,500.

12 q. An acre?

625 A. Yes, sir.

13 q. What, in your estimation, was the property about which Mr. Walker talked with you, worth, at the time he talked with you—that is, if it had any real value?

A. The property at that time I considered unsalable. What it was worth would have to be based upon calculations looking into the future, which I was not able to make myself. I had bought before that, and held the title in my name, although I did not own the ground, a 57-acre tract very near there, extending over from State st. to the Pittsburgh and F't Wayne road, at $400 an acre, cash. I knew with reference to that, from the fact that I bought it of Mr. Robert W. Hyman, of New York, and held the title of it at that time in my own name. I may hold it yet in my own name. I think I do; perhaps it belongs, however, to the railroads. I had also bought for myself ground below there, in the vicinity of the Rock Island shops, quite a large amount of it for me, at $250 to $300 an acre; that was with special reference to the building of the shops there on the ground then owned by the company, which I
626 knew about, and which the outside public did not, and the land that I bought in the vicinity of the shops would not have been salable, except on account of the location of the shops there at that time. Subsequently, however, and in the fall of 1867, about that time, the land began to appreciate quite rapidly, and I sold out all my interest in the vicinity of the shops, and having made something on it, I desired to reinvest, and concluded to reinvest in that vicinity, as much with reference to the locality of the shops as the extension of the avenues, Wabash and Michigan, down to the property that I first spoke of, that is, the 34 acres bought of Dr. Hess. I was somewhat of a pioneer, I guess, in that speculation, down in that vicinity, although afterwards a great many other men went in and made a great deal more money than I did, because I sold too soon.

14 q What price did Mr. Walker hold the property concerning which he spoke to you at?

A. I don't remember. The property I think was offered to me somewhere about that time by Mr. Harvey, a real-estate man here,
627 who knew of my purchases in the vicinity of the shops, but I don't recollect the figure at which it was offered.

15 q. You did not purchase from Mr. Harvey?

A. I did not, sir.

16 q. What reason did you have for not purchasing?

A. I could not look into the future.

17 q. The price was higher than you wished to pay, was it?

A. Well, there was nothing in it, unless a man could have foreseen what afterwards happened.

Cross-examination by Mr. Hill:

X 1 q. Do you know when it was first publicly made known in the city of Chicago that the Rock Island car works would be built?

A. No, sir; I could not give dates except by referring to papers.

X 2 q. Well, about when?

A. It must have been known in the summer of 1867, perhaps pretty early in the summer?

X 3 q. Wasn't it known in 1866?

A. I knew it in 1866, but I can't tell when the outside public knew it. I didn't pay any attention to that part of it, you know.

628 X 4 q. It was determined upon prior to 1866, was it not?

A. No, sir; I think not. It was not determined upon until the last minute. They had an idea of building on the 57 acres which I have spoken about, but I had bought for them above there considerable; they had two pieces, one piece that they actually built on, and the other that they thought about building on; and when we had got our interest secured all around the present shops, it was then determined to build them there. I had other parties with me in the speculation.

X 5 q. Whereabouts was the land located that you paid $1,500 for?

A. It was located in section 3. I can show it to you on the map there; it is marked D. Hess.

X 6 q. South of Pryor and Hopkins' subdivision?

A. Yes, sir.

X 7 q. In the southwest corner?

A. It is the south 34 acres; the 80-acre tract of which this 34 acres reaches up to the Pryor and Hopkins' subdivision.

X 8 q. Was there any rise in value from January, 1867, to October, in the property in that vicinity?

629 A. I think it was quite firm in the fall. I bought it October 3rd I could have bought it a month before for considerably less. It had been offered less. I think it had been offered as low as $1,000. I knew that $1,200 would have bought it in the latter part of August or 1st of September. When I made the purchase it was not considered a good one by gentlemen best acquainted with the matter whom I consulted afterwards about it, but my reason for purchasing was that I had made something in that vicinity, and I thought I would not take the money very far, and this happened to be a solid block that I could buy and put in my profits, and I did so.

X 9 q. What effect had the prospect of the park in the spring of 1867 upon the property in that vicinity, if any?

A. The park was considered defeated.

X 10 q. Well, before the defeat of the park?

A. The park was defeated in the spring of 1867 I guess; yes, that is the time when they voted on it, but as a sort of forlorn hope the case was taken up by myself and others to the supreme court upon ap-

630 plication for a mandamus to count the votes which had been thrown out by the board of canvassers in the city, and we had some hope of succeeding in the matter.

X 11 q. Prior to the vote on the park, what effect had the prospect of the park upon the value of the property?

A. I don't think it had much; it didn't seem to alter it after it was defeated; and after we were defeated in the supreme court it kept rising rapidly notwithstanding that then there was no prospect of a park at all. I don't think this park has ever had much influence upon it; certainly the first bill did not. I don't know so much about the last, because I had sold out.

X 12 q. How did the land in the S. W. ¼ of this section 3, that *that* you bought in the fall, compare with that in Pryor and Hopkins subdivision?

A. As it has turned out it was not as good—that is, as you get nearer the city the land is more valuable; but at that time, as I said before, I

bought as much with reference to the location of the shops as anything else—more—and this was nearer the shops, and consequently I
631 supposed it would be more benefitted than the other, and as a purchase I would have preferred it at that time.

F. H. WINSTON.

And I do further certify that the preceding depositions, taken on application of the defendants in a suit now pending in the circuit court of the United States, wherein John J. Walker et als. are complainants and W'm M. Derby et al. are defendants, was reduced to writing by me, and signed by the said witnesses in my presence; and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

Witness my hand and seal this 1st day of April, A. D. 1870.

[SEAL.] S. W. BURNHAM,
U. S. Com'r Nor. Dist. Ill.

(Endorsed:) Filed July 5, 1870. W'm H. Bradley, cl'k.

632 *Dep. of H. S. Monroe.*

Circuit court of the United States.

WALKER ET ALS.
v.
DERBY ET ALS.

Testimony of Henry S. Monroe, W'm M. Derby. July 6th, 1870.

Ely, Burnham & Bartlett, official reporters of the courts of Chicago.

Henry S. Monroe, one of the defendants, having been duly sworn, testified as follows:

Q. State your name, occupation, and residence.

A. My name is H. S. Monroe; my residence is Chicago; my occupation is that of lawyer.

Q. Are you one of the parties defendant to this suit?

A. I am.

Q. Are you acquainted with the pleadings to this case?

A. I think I am, somewhat.

Q. Have you read them?

633 A. I have read them; yes, sir.

Q. Were you presented with an abstract of title to the property in controversy for examination as attorney of the defendant W'm M. Derby, in March, 1867?

A. I was, sir.

Q. Have you that abstract before you?

A. I have.

Q. Down to what point?

A. I have marked here with my name.

Q. Down to what point on the paper which you now hold was the abstract presented to you at that time for examination?

A. Down to the point where I have written my name, and it is at the end of the certificate of Shortal and Hoarde, which immediately follows No. 24 of the abstract, 24 being an exemplified copy of the last will and testament of Arthur F. Hopkins.

Q. Did you, in the examination, or during the time you were examining that abstract, have conversations in regard to the title with John J. Walker?

A. I did.

Q. Will you give the date of the certificate upon the abstract to which you have referred?

A. March 8th, 1867.

Q. Do you know the time when the deeds from John J. Walker,
634 executor, to William M. Derby, was executed and delivered?

A. I remember the time.

(Objected to.)

Q. Did you, during your conversation with Walker, or during your examination of this title, have any knowledge or information of the declaration of trust set forth upon the second page of the complainants' bill in this case?

A. I did not; I never saw it or heard of it.

Cross-examination waived:

Dep. W'm M. Derby.

W'm M. Derby, one of the defendants, having been duly sworn, testified as follows:

Q. State your name and residence.

A. William M. Derby; residence, Chicago.

Q. Are you one of the defendants in this suit.

A. I am.

Q. Did John J. Walker, one of the complainants in this suit, furnish you with an abstract of the title to the property in controversy?

A. He did.

Q. Will you look at the paper now shown you, and state whether it is the abstract furnished you by John J. Walker.

A. This is the abstract that Mr. Walker furnished me.

Q. Had you any knowledge or information of the declaration
635 of trust set forth on the second page of the bill in this case, until about the first of June, 1867?

A. I had no information of it whatever.

Q. Had you any knowledge?

A. No knowledge whatever.

Q. Neither knowledge nor information?

A. Neither knowledge nor information.

Cross-examination waived.

(Endorsed:) Filed July 6, 1870. W'm H. Bradley, cl'k.

The foregoing testimony of Henry S. Monroe, who is one of the solicitors of the firm of Monroe & McKinnon in this cause, and of William M. Derby, was taken in open court after the cause was called for trial; the complainants having, in order to prevent a continuance of the cause, waived their objection to the examination at this time of said witnesses—but reserved their objections to the testimony as irrelevant and otherwise illegal.

July 6th, 1870.

H. W. BLODGETT, *Judge.*

636 Circuit court of the United States for the northern district of Illinois.

JOHN J. WALKER ET ALS.
v.
WILLIAM M. DERBY ET ALS.

And now come the complainants, by their solicitor, and object to the testimony of Henry S. Monroe, for the reason that the same is immaterial, irrelevant, and incompetent, and contradictory to the admissions in the answers of defendants Derby, Kerfoot & Pierson.

And they further object to the testimony of William M. Derby, for the same reasons.

Dated Chicago, July 6, A. D. 1870.

EDW'D J. HILL,
Sol'r for Complainants.

637 In the circuit court of the United States at Chicago.

JOHN J. WALKER & OTHERS, COMPLAINANTS,
vs.
W'M M. DERBY, SAM'L H. KERFOOT, AND others, defendants.

The complainants object and except to the testimony taken at the hearing of Henry S. Monroe and William M. Derby, in respect to their notice of the title of complainants John J. Walker and Maria Walker, to the land in controversy—because notice of that title is admitted in the answers—and there is no issue in regard thereto.

EDWARD J. HILL, and
A. R. MANNING,
For Plaintiffs.

(Endorsed:) Filed July 11, 1870. W'm H. Bradley, cl'k.

638 The following is a copy of the abstract referred to in the testimony of H. S. Munroe & W'm M. Derby.

Examination of title to the east half of blocks 1 and 6, all of blocks 4, and 5, and lots 1, 2, 23, and 24, in block 12, in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section 3, T. 38 N., R. 14 E. of 3rd p. m.

(1.) The State of Illinois to William H. Swift, David Leavitt, and Jacob Fry, trustees of the Illinois and Michigan Canal, and their successors in said trust.

Grant, dated June 26, 1845, and recorded July 15, 1845, in book 15, page 215, sets forth at length the acts of the legislature of Illinois, one entitled "An act to provide for the completion of the Illinois and Michigan Canal, and for the payment of the canal debt," approved February 21, 1843, and the other, an act supplementary to that last recited, approved March 1, 1845; and whereas, all things required by said acts to be done before the execution of a deed of trust to the said trustees, having been done, according to the requirements of said acts:

Therefore in execution of the provisions of said acts, &c.,
639 grants, bargains, sells, conveys, &c., the bed of said canal, and the land over which the same passes * * * * and all the remaining lands and lots belonging to the canal fund, or which hereafter may be given, granted, or donated by the General Government to the State to aid in the construction of the said canal * * also the lands and lots remaining unsold donated by the United States to the State of Illinois to aid in the completion of said canal—to have and to hold the same for the uses and purposes in the said acts expressed and intended, &c.

(2.) Trustees of the Illinois and Michigan Canal to H. G. Loomis.

From the "land book" in the county clerk's office, it appears that the W.½ N. W.¼, section 3, T. 38, R. 14 E, was purchased by said Loomis at canal sale May 10, 1849.

(3.) Trustees of the Illinois and Michigan Canal to Horatio G. Loomis.

Canal deed, dated May 7, 1853, and recorded June 16, 1853, in book 1 of canal deeds, page 419—consid'n $1,200 00; convey the W.½ of the northwest quarter of section 3, T. 38 N., R. 14 E. of 3rd p. m., containing 80 acres, more or less.

640 (4.) Horatio G. Loomis, of Chicago, Illinois, to James W. Pryor.

Warranty deed, dated April 23, 1853, and recorded June 16, 1853, in book 65, page 77; consid'n, $21,000 00; conveys the W. ½ of the northwest quarter of section 3, T. 38, R. 14 E. of 3rd p. m., save and except ten acres, parcel thereof, which is to be taken off the south end of said land by a line running east and west parallel to the south line of said lot, the land hereby conveyed being (it is stated) the same land (less the same 10 acres) which was sold to the said party of the first part by the board of trustees of the Illinois and Michigan Canal, May 10, 1849, as appears by certificate No. 723 to that effect, given and signed by D. Leavitt, treasurer.

(5.) James W. Pryor to Horatio G. Loomis.

Mortgage dated April 23, 1853, and recorded June 16, 1853, in book 15 of mortg's, page 219, to secure payment of $18,270 00, conveys the premises last described.

(6.) H. G. Loomis to James W. Pryor.

Satisfaction, entered on margin of record of the mortgage last shown, (No. 5 ante,) as follows:

"For and in consideration of one dollar to me paid, and the full
641 payment of the notes mentioned in the annexed mortgage, I do hereby acknowledge full satisfaction of, and discharge, this mortgage of record.

"Witness my hand and seal this first day of August, 1859.

"H. G. LOOMIS. [SEAL.]

"Witness:

"JNO. F. WAIT."

(7.) Horatio G. Loomis, of Chicago, Illinois, to Charles L. Harmon.

Quitclaim deed, dated April 25, 1853, and recorded August 22d, 1853, in book 68, page 60. Consid'n, $150 00. Conveys all right, title, and

interest in and to ten acres off from the south end of the west half of the northwest quarter of section 3, T. 38, R. 14 E. of 3rd p. m.

(8.) Charles L. Harmon with David O. Bradley, Charles A. Fowler, James Clapp, and G. W. Davenport.

Agreement, dated March 7, 1854, and recorded March 7, 1854, in book 72, page 481, for conveyance of the premises last described, on payment of $3,000 00 in installments. Signed and acknowledged by Harmon only.

642 (9.) Charles L. Harmon with David O. Bradley, Charles A. Fowler, James Clapp, and G. W. Davenport.

Agreement, dated March 7, 1854, and recorded June 16, 1854, in book 76, page 570. Apparently a record of the agreement last shown, signed by all the parties. Appended to the agreement last shown (No. 9, ante) is the following:

(10.) G. W. Davenport, D. O. Bradley, Cha's A. Fowler, James Clapp to James W. Pryor.

Assignment, dated May 23, 1854, and recorded June 16, 1854, in book 76, page 571. Consid'n, $2,000 00. Assign, &c., "the within contract," and all estate, right, title, interest, claim, property, and demand of, in, and to the same, and the premises therein described.

(11.) Charles L. Harmon and Abba Ames, his wife, of Chicago, Illinois, to James W. Pryor.

Warranty deed, dated March 13, 1856, and recorded March 13, 1856, in book 109, page 132. Consid'n, $3,000 00. Convey all that piece or parcel of land, viz: Ten acres off from the south end of the west half of the northwest quarter of section 3, T. 38 N., R. 14 E. of 3rd p. m.

James W. Pryor, of New York City, and Katharine M., his wife, to Arthur F. Hopkins.

Warranty deed, dated May 1, 1854, and recorded May 17, 1854,
643 in book 79, page 202. Consid'n, $9,000 00. Convey 23⅓ acres, part of 70 acres of the west half of the northwest quarter of section 3, T. 38, R. 14 E. of 3rd p. m., being an undivided one-third interest in said 70 acres which were bought by said James W. Pryor from H. G. Loomis on April 23, 1853, the said 70 acres being the whole of the said west half of northwest quarter, except 10 acres taken off the south end of said west half by a line running east and west, parallel to the south line of said west half. Certif. of ack'm't by a notary public, New York City, is attested, "Given under my hand and seal this," &c. Seal as recorded is, (Seal.)

(13.) James W. Pryor, of New York, and Katharine M., his wife, to Arthur F. Hopkins.

Warranty deed, dated May 1, 1854, and recorded June 26, 1856, in book 11, page 387. Apparently a rerecord of the deed and acknowledgement thereof last shown, with the word "notarial" inserted after the word seal in the attestation of said certificate of acknowledgement.

644 (14.) James W. Pryor and Catherine M., his wife, to Catherine Mitchell, widow of the late Dr. Samuel L. Mitchell, all of New York City.

Warranty deed, dated May 1, 1855, and recorded May 10, 1855, in

book 92, page 307. Consid'n, $2,087 00. Convey 5¼ acres of land, being the 5¼ acres off the south end of the west half of the northwest quarter of section 3, T. 38, R. 14 E. of 3rd p. m. The said 5¼ acres being the 5¼ acres nearest the southern boundary of said west half, and bounded on the north by a line running parallel with said southern boundary from the west boundary of said west half to the east boundary of said west half of said quarter section.

(15.) Catherine Mitchell, widow of the late Dr. Samuel L. Mitchell, to Katherine M. Pryor, the adopted daughter of the said Catherine, and wife of James W. Prior, all of New York City.

Deed in trust, dated May 1, 1855, and recorded May 10, 1855, in book 92, page 308. In consideration of $5 00, also of the love and affection which the said Catherine bears for her said adopted daughter, and of the further consideration hereinafter named, conveys the premises last described.

645 To have and to hold the same, upon the following trusts and conditions, namely: Whereas the said party of the first part is indebted in or about the sum of $16,000 00 by bond, to Marcus F. Dow, or his assigns, to be paid in 1859, or sooner, if the said party of the first part should depart this life before said year 1859. The condition of this conveyance is such, it is stated, that should the party of the first part, at any time choose to pay off said debt of $16,000 00, or any part thereof, the said Katherine M. Pryor, at the request of said party of the first part, shall sell the said 5¼ acres of land at public or private sale, and upon such terms and conditions as party of first part shall direct, and after paying the expenses of this trust, and of said sale, shall pay the residue of the proceeds of said sale to party of first part, or the holder of said bond, as may be directed by said party of first part, as the sole object of this conveyance, it is stated, is the benefit of said adopted daughter of party of the first part, after payment of said debt of $16,000 00, if she, the said Katherine M., shall at any time pay said debt, or any part thereof, with interest due thereon, then party of the second part may and shall hold said land forever, to the sole use and benefit of her and her heirs, free from the said trust,
646 and from all claim or interest on the part of party of the first part, or her heirs, except so much of said debt as may remain unpaid; or if the said Catherine Mitchell should pay said debt, without requiring the sale of land, then the said Catherine M. Pryor may and shall hold said land, to the sole use and benefit of herself and her heirs forever, free from said trust, and all claim or interest on the part of the said Catherine Mitchell or her heirs; or, if the said Catherine Mitchell should pay a part of said debt, or require the sale of a part of said land, then the said Katherine M. shall hold the said land, or the residue thereof, subject only to the payment of the residue of said debt, and on the payment thereof, shall hold said land to her and her heirs forever.

(16.) Arthur F. Hopkins and Juliet A., his wife, of Mobile, Alabama, to James W. Pryor.

Power of attorney, dated May 10, 1856, and recorded June 26, 1856, in Book 111, page 389. To grant, bargain, and sell, all their right, title, and interest, in and to all lands now owned by the said Arthur F. Hopkins, or in which he may be interested, either severally or jointly with others, lying and being in Cook County, Illinois; to make a sur-

647 vey and subdivision of the same; to acknowledge and place on record a map or maps of said subdivision, and to make, sign, seal, acknowledge, and deliver, good and sufficient deeds and conveyances for the same.

(17.) James W. Pryor and Katherine M., his wife, and Catherine Mitchell, all of New York City, to Samuel H. Kerfoot.

Power of attorney, dated May 15 1856, and recorded June 26, 1856, in book 111, page 390. To make or cause to be made a survey and subdivision of the south 5½ acres, off the south end of the west half of the northwest quarter of section 3, T. 38, R. 14 E, in Cook County, Illinois, and to acknowledge and place on record a map or maps of said subdivision, according to any plan that may seem proper to said attorney.

(18.) NOTE.—We find recorded in book 92, page 463, a power of attorney from Arthur F. Hopkins and James W. Pryor, to James H. Rees, and Samuel H. Kerfoot, to subdivide the premises in question, which said power was revoked by instruments recorded in book 205,
648 page 462, and book 206, page 272.

(19.) Subdivision by James W. Pryor and Samuel H. Kerfoot, the former for himself, and as the attorney-in-fact for Arthur F. Hopkins, and the said Kerfoot as attorney-in-fact of Catherine Mitchell and Catherine M. Prior.

Map entitled subdivision W. ½, N. W. ¼, sec. 3, "38—14." Surveyor's certificate dated May 30, 1856, acknowledged June 3, 1856, and recorded June 26, 1856, in book 98 of maps, page 96.

Said map is as follows:

(Here follows map marked page 649.)

650 (21.) Arthur F. Hopkins and Juliet A., his wife, with James W. Pryor, and Katherine M., his wife.

Partition deed, dated July 3, 1856, and recorded July 14, 1856, in book 116, page 413, sets forth that said Arthur F. Hopkins and James W. Pryor own in equal parts, as tenants in common, the north 70 acres of land in the west half of the northwest quarter of section 3, T. 38, R. 14 E., in Cook County, Illinois, and that they have agreed to make partition of said 70 acres, as hereinafter described; and whereas the said 70 acres, together with the other 10 acres of said west half, have been surveyed and subdivided into 12 blocks and 288 lots, according to a map of said survey and subdivsion, &c. Now, in consideration of the premises, and for the purpose of making partition of said 70 acres between said Arthur F. and James W.: This indenture made this 3rd day of July, 1856, between the said Arthur F. and Juliet A., wife of the said Arthur, of the first part, and said James W. and Katherine M., wife of the said James W., of the second part, witnesseth: That the said parties of the first part, remise, release, and confirm unto the said James W. Pryor, his heirs and assigns, so much of the said 70 acres of land described and marked in said survey and map as the W. ½ of block 1, the W. ½ of
651 block 6, the whole of block 2, the whole of block 3, the whole of block 7, the whole of block 8, the whole of block 9, all the lots in block 10, 11, & 12, owned by said Arthur and James, except lots 1, 2, 23, and 24 in block 12, * * * and the said James W. Pryor, and Katherine M., wife of the said James W., for the purpose and consideration, remise, release, and confirm unto the said Arthur F. Hopkins, his heirs

and assigns, forever, so much of said 70 acres of land described and marked on said survey and map, as the east half of block 1, and the east half of block 6, fronting easterly on Indiana avenue, the whole of block 4, bounded by State street, First street, Wabash avenue, and Second street, the whole of block 5, bounded by First street, Michigan avenue, Second street, and Wabash avenue; and lots 1, 2, 23, and 24, in block 12; to have and to hold the said lands above remised, released, and confirmed to the said Arthur F. Hopkins, his heirs and assigns forever.

(22.) UNION STOCK YARD AND TRANSIT COMPANY
vs.
A. F. HOPKINS.

In the circuit court of Cook Co., case No. 453. Railroad docket. Petition to condemn land for right of way filed June 2d, 1865. The commissioners appointed by the court report that they award and assess the damages and compensation to be paid to said defendants, for
652 taking the lands "specified in the petition and schedule at the foot thereof," and injuriously affecting the real estate and premises described in the said petition as follows: * * * To A. F. Hopkins, $1,000 00. Appended to the petition is a map entitled "Map of line adopted by the Union Stock Yard and Transit Company, May 16, 1865," which as far as regards the premises in question is as follows:

(Here follows map marked page 652.)

653 (24.) Exemplified copy of the last will and testament of Arthur F. Hopkins.

Dated May 12, 1859. Left for record by us March 11, 1867, (doc't No. .)

Testator declares this to be his last will and testament "revoking all other wills by me heretofore made."

Item first. "I hereby give my executors full power and authority to sell and convey all of my houses and lots in the city of Mobile, and all other lands or real estate I may own, wherever the same may be situated, at such times and upon such terms as they may consider most advantageous." I have a title to about thirty-six and a quarter acres of land adjoining the city of Chicago, in the State of Illinois, but my daughter Maria Walker has an undivided interest in them of two acres, which can be ascertained from an instrument in writing I made in her favor; and my son John J. Walker has an undivided interest of two and a half acres in them, being in that part of my land, consisting of ten acres belonging to James W. Pryor and myself, and for which the said Walker holds my written contract.

Items 2 and 3 dispose of certain personal property in Alabama and elsewhere.

654 Items 4 and 5 provide for the distribution of the proceeds of the sales hereby authorized of all testator's property, real and personal, among his wife, his seven living children, and the trustee of two of his grandchildren.

Item 6 relates to the share of testator's wife in this distribution; and it is stated in this article, that for reasons named, "and in compliance with her own request, I give her a child's part only, as aforesaid."

Items 7, 8, 9, and 10 also relate to the shares of testator's children in the distribution aforesaid.

Item 11 relates to real estate in Mobile.

Item 12. "Wherever, in this will, I have given power and discretion to my executors, it is my meaning and will, that such power and discretion may be exercised by either one of them, if only one of them should qualify as executor, or by the survivor of them, if one should die, as fully as might be done by both of them."

Item 13 nominates and appoints John J. Walker and William G. Jones, both of Mobile, executors of this will, dispensing with security on their part on qualifying as executors.

Codicil, dated May 18, 1861, relates to the separate property of his wife, for whom testator was trustee, also to the share of one of testator's children, which is changed from an absolute bequest to a
655 trust estate, and makes sundry bequests of specific articles.

Appended is a certificate by George W. Bond, judge of the court of probate of Mobile County, Alabama, dated February 2, 1866; that said will was, this day, in said court before him as judge thereof, duly proven by the proper testimony, to be the genuine last will and testament and codicil thereto of Arthur F. Hopkins, deceased, and that same has been recorded in his office, in Book of Wills, No. 3, at pages 467, &c., &c.

Also appended, is a certificate by same judge and ex-officio clerk of said court, that foregoing contains a full, true, and correct copy of said will and codicil, and the testimony establishing the same; this last certificate, dated February 16, 1867, and tested under the hand of said judge, and the seal of said court.

Also appended, is a certificate by same officer, dated February 16, 1867, that William G. Jones, one of the executors named in said will, did, on February 6, 1867, duly resign as such executor, and that said resignation was, on said day, duly entered of record, and that John J. Walker is, at this time, *is* the sole acting executor of said will, and fully authorized to execute the provisions thereof.

656 We have made examination, and find—

No conveyances of the premises described in the caption hereto, by the parties named as grantors or grantees herein recorded in the recorder's office of Cook County, Illinois, prior to the dates of record of the deeds, as by them respectively herein set forth.

No judgments recorded against said parties in the several courts of record in said county, which we deem liens on said premises, and no tax sales of same standing on record, not marked cancelled or redeemed.

Chicago, March 8th, 1867.

H. S. MONROE.
SHORTALL & HOARD.

657 *Admission by counsel.*

That the letter attached, as Exhibit D, to the amended bill, is in the handwriting of Mr. Kerfoot; was written by Kerfoot & sent by Kerfoot to John J. Walker, complainant, on the 14th of March, 1868. Copies of a letter, dated May 14, 1866, signed John J. Walker, & copy of a letter, dated June 15, 1866, also signed John J. Walker, both admitted, as original ones, without objection. Letter of S. H. Kerfoot & Co., to John J. Walker, dated June 29, 1866, admitted without objection. Letter of S. H. Kerfoot & Co., to John J. Walker, dated Aug. 31, 1866, admitted without objection. Letter of S. H. Kerfoot & Co. to John J. Walker, ex'r, &c., Sherman House, dated March 19, 1867, admitted without objection. Letter of April 11, 1867, to John J. Walker, esq., signed S. H. Kerfoot, dated April 11, 1867, admitted without objection.

Account of Kerfoot & Co. with John J. Walker, ex'r, may be admitted without objection, & read with Mr. Walker's deposition.

It is agreed between the parties to this suit, that the deposition of Martin Andrews, & the deposition of James W. Pryor, the depo-
658 sition of Mr. Lewis W. Stone, Geo. R Clarke, & U. P. Smith, S. H. Kerfoot, J. Ford Pierson, and A. J. Averill, taken before Ely, Burnham & Bartlett, may be used & read in evidence on hearing, subject only to objections for materiality & relevancy when the same are signed. Exemplifications of letter of attorney, recorded in book 92, page 463, recorder's office, Cook Co., with revocation, recorded in book 205, on page 462, may be read in evidence; also depositions on part of defendants, viz: E. C. Cleaver, Jno. S. Wallace, F. H. Winston, H. E. Pickett, J. D. Harvey, & J. L. Lombard, except as to materiality & relevancy.

The exemplification from the probate court of Mobile County, Alabama, on file in this case may be read without objection to the form and substance of the certificate.

MONROE & McKINNON,
Att'ys, &c., for Def'ts.
E. J. HILL,
Sol'r for Compl'ts.

(The foregoing admissions of counsel should be inserted on page 296 of this record.)

659 (The following affidavits of Walker, Kerfoot, and Pierson, should be inserted after page 99, of this record.)

Affidavit of John J. Walker.

Circuit court of the United States for the northern district of Illinois.
In chancery.

JOHN J. WALKER, EXECUTOR; JOHN J. WALKER, Maria Walker, William Barnewall, Mary M. Barnewall, Starke H. Oliver, Kate E. Oliver, William L. Hopkins, Juliet A. Hopkins, Augusta H. Rice, Henry A. Lowe, and Cornelia C. Lowe, complainants,
vs.
WILLIAM M. DERBY, DEFENDANT.

STATE OF ALABAMA, *Mobile County, ss:*

John J. Walker, being duly sworn, deposes and says:

That he is the executor of the last will and testament of Arthur F. Hopkins, deceased, and that as such executor, and for himself, and for all the other parties interested in the estate of such testator, and
660 in and to the following-described property, at or near Chicago, situate to wit: An equal undivided half part of the first following-described tract of land, known as that part of the northeast quarter of section four, (4,) township thirty-eight (38) north, of range fourteen (14) east of 3rd p. m., bounded and described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad to the north line of said section; thence east on said north line to the

Item 12. "Wherever, in this will, I have given power and discretion to my executors, it is my meaning and will, that such power and discretion may be exercised by either one of them, if only one of them should qualify as executor, or by the survivor of them, if one should die, as fully as might be done by both of them."

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Chicago, March 8th, 1867.

H. S. MONROE.
SHORTALL & HOARD.

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658 sition of Mr. Lewis W. Stone, Geo. R Clarke, & U. P. Smith, S. H. Kerfoot, J. Ford Pierson, and A. J. Averill, taken before Ely, Burnham & Bartlett, may be used & read in evidence on hearing, subject only to objections for materiality & relevancy when the same are signed. Exemplifications of letter of attorney, recorded in book 92, page 463, recorder's office, Cook Co., with revocation, recorded in book 205, on page 462, may be read in evidence; also depositions on part of defendants, viz: E. C. Cleaver, Jno. S. Wallace, F. H. Winston, H. E. Pickett, J. D. Harvey, & J. L. Lombard, except as to materiality & relevancy.

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In chancery.

JOHN J. WALKER, EXECUTOR; JOHN J. WALKER, Maria Walker, William Barnewall, Mary M. Barnewall, Starke H. Oliver, Kate E. Oliver, William L. Hopkins, Juliet A. Hopkins, Augusta H. Rice, Henry A. Lowe, and Cornelia C. Lowe, complainants,
vs.
WILLIAM M. DERBY, DEFENDANT.

STATE OF ALABAMA, *Mobile County, ss:*

John J. Walker, being duly sworn, deposes and says:

That he is the executor of the last will and testament of Arthur F. Hopkins, deceased, and that as such executor, and for himself, and for all the other parties interested in the estate of such testator, and
660 in and to the following-described property, at or near Chicago, situate to wit: An equal undivided half part of the first following-described tract of land, known as that part of the northeast quarter of section four, (4,) township thirty-eight (38) north, of range fourteen (14) east of 3rd p. m., bounded and described as follows: Commencing at the northeast corner of said quarter section, running thence south seventy-four (74) rods; thence west to the east line of the Chicago and Rock Island Railroad; thence north on the east line of said railroad to the north line of said section; thence east on said north line to the

place of beginning. Also, the whole of the following-described parcels and pieces of land, to-wit: The east half of blocks numbered one (1) and six, (6,) and the whole of blocks numbered four (4) and five, (5;) and also lots one, (1,) two, (2,) twenty-three, (23,) and (24,) twenty-four, in block twelve, (12,) in Pryor and Hopkins' subdivision of the west half of the northwest quarter of section three, (3,) township and range aforesaid—did repair to the city of Chicago, and that the affiant, at said city, on or about the first day of March, A. D. 1867, did employ
661 Samuel H. Kerfoot and J. Ford Pierson, who then were doing business as real-estate agents & loan brokers in said city, under the firm name and style of S. H. Kerfoot & Co., to sell said property as such agents on behalf of the owners thereof; and that afterwards, on or about the 19th day of March, 1867, by and through and with the counsel, aid, and services of said S. H. Kerfoot & Co., and upon their representations that William M. Derby was the sole purchaser of all said property for $25,600, the affiant executed and delivered to the said S. H. Kerfoot & Co., for the said William M. Derby, a deed of all said property as such executor, in due form of law, and that thereupon affiant received for said property the sum of eight thousand two hundred dollars in cash, and that said William M. Derby thereupon executed and delivered to said S. H. Kerfoot & Co. securities predicated on said property for $17,400, payable in instalments, in one, two, & three years from the 16th day of March, 1867, respectively, to be delivered to affiant or his order, as soon as he should procure a confirmatory deed of all said property from the other parties interested in said property; and
662 that afterwards, in order to perfect such sale, and to obtain said securities, affiant, on or about the 4th day of June, A. D. 1867, at Chicago, delivered to said S. H. Kerfoot & Co., for said William M. Derby, a quitclaim deed from John J. Walker, William Barnewall, Mary M. Barnewall, Starke H. Oliver, Kate E. Oliver, W. L. Hopkins, Juliet A. Hopkins, Maria Walker, Henry A. Lowe, Augusta H. Rice, and Cornelia C. Lowe, to said William M. Derby, conveying all said property as of date March 16, '67, in due form of law.

And affiant further says that the said William M. Derby well knew and understood that the said S. H. Kerfoot & Co. were the agents of the owners of said property, to make sale thereof, and that said S. H. Kerfoot & Co. were ostensibly acting as such agents in conjunction with affiant during the whole transaction, and that it was understood by affiant that the said William M. Derby was the sole purchaser of such property.

Affiant further says that, upon information since obtained and discoveries since made, he has ascertained and knows that the said S. H. Kerfoot & Co. and said William M. Derby became the joint pur-
663 chasers of said property at said sale from the owners thereof which was negotiated and effected by said S. H. Kerfoot & Co. as agents as aforesaid; and that such interest was acquired by said S. H. Kerfoot and J. Ford Pierson, made under and by virtue of negotiations and arrangements between them, which produced a written instrument signed by them respectively, of which the following is a copy or is believed to be a copy:

"In consideration of three hundred and seventy-five dollars, to me paid by Samuel H. Kerfoot and J. F. Pierson, known as S. H. Kerfoot & Co., of the city of Chicago, I do hereby agree to sell and quitclaim to said Kerfoot & Co. at any time before the first day of September, A. D. 1867, said Kerfoot & Co. agreeing to purchase, one-half of the property by me purchased of John J. Walker, the executor of Arthur F. Hop-

kins, deceased. It is agreed that if the said Kerfoot & Co. shall pay to me in cash four thousand and one hundred dollars and the further sum of eight thousand seven hundred dollars, payable in one, two, and three years in equal payments and bearing interest at six per cent. per annum, and secured by deed of trust. It is further agreed that if the
664 said Kerfoot & Co. should fail to comply with the conditions of this agreement, or fail to make payment before the first day of Sept., 1867, then this agreement to be void, and the three hundred and seventy-five dollars so paid by said S. H. Kerfoot & Co. shall be forfeited to me and retained by me as stipulated damages for the non-fulfillment of said Kerfoot & Co. part of this agreement.

"Dated Chicago, March 19, 1867.

"W'M M. DERBY. [SEAL.]
"S. H. KERFOOT. [SEAL.]
"J. F. PIERSON." [SEAL.]

of which negotiations and arrangements and said written instrument this affiant had no intimation or knowledge until within a short time, the same having been kept hidden from the affiant until February, 1868, & then having been sought to be explained away by the said Kerfoot & the said Derby.

And affiant further says that, for making said supposed sale to said William M. Derby, affiant on the 19th day of March, 1867, paid to said S. H. Kerfoot & Co. the sum of seven hundred and fifteen dollars for their commissions in that behalf, which said commissions the
665 said S. H. Kerfoot has since admitted to affiant were divided or agreed to be divided, & shared equally between the said S. H. Kerfoot & Co. & the said William M. Derby.

And affiant further says that said executor, and all the persons who made said sale and united in making said conveyances, did not nor did any of them know of said joint purchase or joint interest thus secured; but, on the other hand, made the said conveyance believing that the said S. H. Kerfoot & Co., & the said William M. Derby had acted fairly in the whole transaction & honestly—the said S. H. Kerfoot & Co. as their agents, and the said William M. Derby, as sole purchaser, and in that behalf and to confirm said sale fully to said William M. Derby as such sole purchaser, executed said deed, and not otherwise.

And further deponent saith not.

JOHN J. WALKER.

Subscribed & sworn to before me this 14th day of April, A. D. 1867.
[NOTARIAL SEAL.] J. S. SECOR,
Notary Public.

[$1 00. State of Alabama, tax on seal stamp.]

666 (Endorsed:) Filed April 19, 1869. W'm H. Bradley, cl'k.

Affidavit of Samuel H. Kerfoot.

In the circuit court of the northern district of Illinois. In chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss :

JOHN J. WALKER, MARIA WALKER, WILLIAM Barnwell, Mary M. Barnwell, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, plaintiffs,
vs.
WILLIAM M. DERBY.

Samuel H. Kerfoot, of the city of Chicago, in the county of Cook, and State of Illinois, being first duly sworn, on oath says:

That he has read the amended bill of complaint filed in this cause and carefully considered the same.

667 Affiant further says that, on or about day of February, in the year of our Lord one thousand eight hundred and sixty-seven, the said complainant John J. Walker, came to the city of Chicago and placed the lands described in the said bill of complaint as sold by said Walker to said Derby in the hands of the firm of S. H. Kerfoot & Co. for sale, which firm was and is composed of this affiant and J. Ford Pierson.

Affiant further says that he then and there told said Walker that it was a very bad time to sell said land; that a portion of it was low, and was then covered with ice; and that it would sell much better in the spring, after the water had run off and the grass was green, and advised said Walker not to sell till that time.

Affiant further says that said Walker then told this affiant that he had determined to sell the said land for the best price it would then bring, in cash, and asked this affiant what, in this affiant's opinion, it would bring.

Affiant says that he then and there told said Walker that, in his opinion, it ought to bring one thousand dollars per acre; and,

668 after a lengthy conversation upon the said subject, and after, as this affiant was then informed by said Walker, he had consulted with others as to the value of said lands, the said Walker directed this affiant to put the same in market at the price of one thousand dollars per acre, cash:

Affiant further says that for several days thereafter he and his said partner faithfully endeavored to sell said land at that price, but were unable to find any person who would offer one thousand dollars cash per acre for any portion of it, and only receive one offer of one thousand dollars per acre, one-quarter cash, and the balance in one, two, and three years, with six per cent. for that portion of said land which lay east of State street, & which was worth nearly or quite twice as much as that west of State street, which was about one-third of the whole, which offer was made by one Martin Andrews, and made upon condition that his brother-in-law, then in Ohio, & whom said Andrews was about to visit, would furnish the money for the cash payment;

669 and which offer was then communicated by this affiant to said Walker, and by him refused.

Affiant further says that, among others, he offered said lands to said defendant Derby; that said Derby refused to pay the price asked; that some time passed, and no offers better than the one above stated were made for said land; and said Walker asked this affiant who, among those he had spoken to, would, in affiant's opinion, be most likely to buy said land, and that affiant informed said Walker that he thought said Derby was more likely so to do than any one he knew of; and affiant then & there offered to introduce said Walker directly to said Derby, when said Walker could negociate with said Derby as he might deem best.

Affiant further says that, at the request of said Walker, he went for said Derby, and introduced him to said Walker.

Affiant further says that some considerable time then elapsed, during which said Walker and said Derby had various meetings, sometimes in the presence of this affiant, and sometimes by themselves, during
670 which various offers were made by said Derby, and various propositions were made by said Walker.

Affiant further says that, on the sixth day of March, one thousand eight hundred and sixty-seven, at the office of affiant, in Chicago, said Walker and Derby came to an agreement, by which said agreement said Walker agreed to sell, and said Derby agreed to buy, said land for the price of twenty-five thousand and six hundred dollars—eight thousand and two hundred dollars cash, and the balance in three equal annual payments to become due in one, two, and three years, with six per cent. interest, which agreement was then and there reduced to writing, and signed by the said Derby and Walker.

This affiant further says that from the sixth to the *the* nineteenth days of March, one thousand eight hundred and sixty-seven, was consumed in the procuring and examination of the abstract of title to said land; and that, on or about the sixteenth day of March, one thousand eight hundred and sixty-seven, the deed of said land was made out and
670½ executed, and was, on the nineteenth day of said month, delivered; but this affiant further says that, during the whole, or any part of said negociations, neither he nor his said firm had any understanding or agreement of any name or nature, secret or open, with said Derby, or any one else, by which this affiant or his said firm had, or was to have, any interest in the purchase of said land, or in said land itself, or in the sale thereof, or profits to be derived therefrom; and further says that every part and portion of said bill which charges combination and confederacy between this affiant or his said firm, and said Derby, is most false and unjust.

This affiant further says that he, and as he verily believes his said firm, honestly and faithfully endeavored in all things to promote the best interest of said Walker, and that he earnestly and faithfully endeavored to obtain the best price *of* said land possible at the time to get.

Affiant further says that said land, at the time of said sale, was not worth over one thousand dollars per acre at most, and could not
671 then, as this affiant verily believes, have been sold for that in one-quarter (¼) cash, and the balance on time.

This affiant further says that, afterwards, in the month of April, one thousand eight hundred and sixty-seven, land this side of that, sold to said Derby by said Walker, was sold *was sold* by one thoroughly posted in the value of real estate in the vicinity where the said lands lay, at prices no better than that realized by said Walker of said Derby.

Affiant further says that, sometime after said sale to said Derby was

fully closed up, and said Walker had received his money from said Derby, he, said Derby, came into the office of affiant and complained that affiant had induced him to purchase the Walker tract, stating that half of it was a slough, and that the best of it was not worth over one thousand dollars per acre, and that this affiant then and there offered to take one-half of said land of said Derby at the price and on the terms said Walker sold it, provided said Derby would wait for the first payment till the then next September.

672 This affiant further says that said Derby then and there told this affiant that he would accept said affiant's propositions if affiant would pay him one-half of the commissions received from said Walker by affiant's said firm.

Affiant further says that he then and there consulted with said Pierson, and accepted said Derby's said proposition, and that affiant then and there drew a memorandum of said agreement, and dated the same on the nineteenth day of March, one thousand eight hundred and sixty-seven, because the said Derby was to receive interest from that date, which was then and there signed by said Derby and Pierson and this defendant, and is the same set out in the said bill. But this affiant says that his said firm never paid said Derby one-half of said commissions, or the three hundred and seventy-five dollars mentioned in said agreement, and for that reason said Derby refused to carry out said agreement.

And this affiant further says that he never told said Walker that his said firm had paid said Derby one-half of said commissions, but says that he told him the real facts as above stated. But this affiant

673 says that, up to the time said last-mentioned agreement was so made as aforesaid, there was no understanding or agreement between said Derby and this affiant, or between said Derby and said firm, in any way relating to said land, or to the profits that might arise from, or grow out of, said purchase.

Affiant further says that it is not true that any arrangement or agreement was ever made between said Derby and affiant's said firm, or either of them, by which said Derby and said firm were to be co-purchasers of said land, or that said Derby should hold himself out as the sole purchaser of the same.

And this affiant further says that each and every allegation in said bill contained, charging affiant or affiant's said firm with collusion or complicity with said Derby in relation to the said negociations with said Walker, are false, and grossly scandalous, libellous, and unjust.

SAM. H. KERFOOT.

Subscribed and sworn to before me at Chicago, Ill's, this 20th day of April, A. D. 1869.

[SEAL.] PHILIP HOYNE,
U. S. Com. N. D. Ill.

674 (Endorsed:) Filed April 27, 1869. W'm H. Bradley, cl'k.

Affidavit of J. F. Pierson.

In circuit court of the United States for the northern district of Illinois. In chancery.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

JOHN J. WALKER, MARIA WALKER, WILLIAM Barnwell, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, Juliette A. Hopkins, William L. Hopkins, Stark H. Oliver, and Kate E. Oliver, plaintiffs,
vs.
WILLIAM M. DERBY, DEFENDANT.

J. Ford Pierson, of the city of Chicago, in the county of Cook, and State of Illinois, one of the firm of S. H. Kerfoot & Co., being duly sworn, on oath, says:

That he knows the contents of the bill of complaint filed in this cause.

Affiant further states that the business with said Walker related to the sale of the land described in said bill to said Derby was almost wholly done by said S. H. Kerfoot, the partner of this affiant.

Affiant farther says that it is not true that affiant's said firm was in any way or manner interested with said Derby in said purchase of said Walker, or that said Derby and said firm of S. H. Kerfoot & Co. ever had any understanding or agreement by which they were to be in
675 any way interested in the said sale to said Derby or in the profits to be derived therefrom, or by which said Derby was to hold himself out as the sole purchaser of said land, when he and said firm were co-purchasers of the same with him. On the contrary, this affiant says that to the best of his knowledge, information, and belief, his said firm and the said Kerfoot in all doings faithfully and honestly did the best that could be done to promote the interests of said Walker.

This affiant further states that he has read the affidavit of S. H. Kerfoot herein herewith filed, and that so far as deponent is cognizant of the facts therein stated, it is true to the best of his knowledge, information, and belief.

Affiant further states that the first he ever heard or knew that said firm, or either of the members thereof, thought of having any interest in said land, was after said sale from said Walker to said Derby was fully closed, and when said Kerfoot communicated to this affiant the fact that the said Derby had offered to sell one-half of said land to said firm on the terms stated in said Kerfoot's said affidavit.

676 Affiant further says that, on the sixth day of March, one thousand eight hundred and sixty-seven, eight hundred dollars an acre for the land sold by said Walker to said Derby was a fair and reasonable price for the same, and was, as this affiant is informed and verily believes, the highest price that had been realized for land of equal value in the same vicinity for years before.

J. F. PIERSON.

Subscribed and sworn to before me at Chicago, Ill's, this 26 day of April, A. D. 1869.

[SEAL.]

PHILIP A. HOYNE,
U. S. Com. N. D. Ill's.

(Endorsed:) Filed April 27, 1869. W'm H. Bradley, cl'k.

677 On this day, to wit, the 26th day of August, A. D. 1870, said complainants, by their solicitors, filed in said clerk's office their appeal bond in said entitled cause *is* in the words and figures following, to wit:

Appeal bond.

Circuit court of the United States for the northern district of Illinois.

JOHN J. WALKER, JOHN J. WALKER, executor, Maria Walker, William Barnewall, Mary M. Barnewall, Henry A. Lowe, Cornelia C. Lowe, Augusta H. Rice, William L. Hopkins, Starke H. Oliver, Kate E. Oliver, and Juliet C. Hopkins, complainants,
v.
WILLIAM M. DERBY, SAMUEL H. KERFOOT, J. Ford Pierson, Alonzo Rawson, Samuel Wing, Henry H. Honore, Brian Philpot, Henry E. Picket, Joseph B. Shepard, and Henry S. Monroe, defendants.
} In chancery.

678 Appeal from the circuit court of the United States for the northern district of Illinois to the Supreme Court of the United States.

Know all men by these presents that we, John J. Walker, of Mobile, Alabama, as principal, and Edward J. Hill, of Chicago, Illinois, as surety, are firmly held and bound unto the above-named defendants in the sum of five hundred dollars, to be paid unto the said defendants, their and each of their executors and administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated August 22nd, A. D. 1870.

Whereas an appeal has been prayed, and is about to be prosecuted from the circuit court of the United States for the northern district of Illinois, to the Supreme Court of the United States, in the suit
679 wherein the said John J. Walker and others are complainants, and the said William M. Derby & others are defendants, as above set forth and entitled in chancery by the said complainants:

Now, therefore, this obligation is such that, if the said appellants shall prosecute their appeal to effect, and answer all costs if they shall fail to make their plea good, or upon their said appeal, then this obligation to be void; but otherwise it shall remain in full force and virtue.

JOHN J. WALKER. [SEAL.]
EDWARD J. HILL. [SEAL.]

Sealed and delivered in presence of—
JAMES GILLETTE,
U. S. Commissioner,
Southern Dist. of Alabama.
MOBILE, *Aug.* 22, 1870.

STATE OF ALABAMA, *Mobile County, ss:*
John J. Walker being duly sworn, deposes and says that he is one of

the signers and sealers to the above writing obligatory; that he
680 executed the same freely and voluntarily, for the uses and purposes therein set forth, and that he is worth the sum of five hundred dollars, over and above his liabilities, in property not by law exempt from execution.

JOHN J. WALKER.

Subscribed, acknowledged, and sworn to before me, this 22nd day of August, A. D. 1870.

[SEAL.] JAMES GILLETTE,
U. S. Commissioner Southern District of Ala.

(Endorsed:) Filed Aug. 26th, 1870. W'm H. Bradley, cl'k.

Approved and appeal allowed Aug. 26, 1870.

H. W. BLODGETT, *Judge.*

681 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in chancery, in the said entitled cause, wherein said John J. Walker et al, are complainants, and the said William M. Derby et al., are defendants, as the same remains of record in my custody.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said circuit court, at my office in the city of Chicago, this fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy, and of our independence the ninety-fifth year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

(Indorsement on cover:) No. 308. John J. Walker et al., appellants, vs. William M. Derby et al. N. Illinois C. C. U. S. Filed 23d November, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 308.

JOHN J. WALKER ET AL., APPELLANTS,

vs.

WILLIAM M. DERBY ET AL.

ADDITION TO RECORD.—FILED OCTOBER 6, 1871.

1 United States Supreme Court.

JOHN J. WALKER ET ALS., APPELLANTS,
vs.
WILLIAM M. DERBY ET ALS., APPELLEES.

It is hereby stipulated and agreed, in view of the facts set forth in the affidavit of Edward J. Hill, hereto annexed, that a certified copy of the said stipulation mentioned in said affidavit may be made and filed in this court, and that from the filing thereof herein, said stipulation shall be considered a part and parcel of the transcript of the record herein, from the circuit court of the United States for the northern district of Illinois, the same as if said stipulation were set out at length, at page 129 of the printed copy, and page 229 of the manuscript transcript of record aforesaid.

Dated Chicago, September 29, A. D. 1871.

P. PHILLIPS,
Solicitor for Appellants.
H. S. MONROE, AND
BECKWITH, AYER & KALES,
Solicitors for Appellees.

2 United States Supreme Court.

JOHN J. WALKER ET ALS., APPELLANTS,
vs.
WILLIAM M. DERBY ET AL., APPELLEES.

Appeal from the United States circuit court for the northern district of Illinois.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Edward J. Hill, being duly sworn, says that he is the solicitor for the appellants, as complainants in the cause in the circuit court from which this appeal has been taken; that affiant is familiar with the record of

said cause, and, on behalf of the appellants, ordered from William H. Bradley, esq., clerk of said circuit court, a transcript of said record; that endorsed upon and forming part of the replication to the answer of William M. Derby, is a stipulation in words and figures following: "That this replication may stand to the separate answer of Kerfoot and Pierson, and the other defendants for whom we appear.
3 Monroe & McKinnon, sol'r's for defendants;" that said Monroe & McKinnon appeared for all the defendants in said cause except Samuel Wing; that, inadvertently, the said clerk, in making transcript of record for this court, omitted said stipulation, & this affiant failed to discover said omission until his attention was lately called to it by Hon. A. R. Manning, of counsel in the cause for the appellants; that said stipulation should be inserted and made part of the record on this appeal, on page 129 of the printed copy, & at page 229 of the manuscript transcript thereof.

And affiant further says, that application for the correction of said record was not made before, for the reason that until the counsel for the appellants received the printed copy of said transcript, which was furnished to them since the last term of this court, the error or omission aforesaid was not discovered. And further deponent saith not.

EDWARD J. HILL.

4 Subscribed and sworn to before me this 29 day of September, A. D. 1871.

W'M H. BRADLEY, *Clerk.*

In chancery, in the circuit court of the United States for the northern district of Illinois.

JOHN J. WALKER, JOHN J. WALKER, EXE'R, ET als.,
vs.
WILLIAM M. DERBY ET ALS.

The replication of the above-named complainants, and in the amended bill named to the answer of William M. Derby to said amended bill of complaint aforesaid, the complainants, saving and reserving to themselves all and all manner of advantage of exception to the manifest insufficiency of the said answer, for replication thereunto, say that they will aver, maintain and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that the answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these complain-
5 ants, without this, that any other matter or thing whatsoever in said answer contained material in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these complainants are and will be ready to aver and prove, as this hon. court shall direct; and humbly pray, as in and by their said bill and amended bill, respectively, they have always prayed.

HILL & DALE,
Complainants' Solicitors.

A. L. COLLINS, *Of Counsel.*

The above and foregoing replication may be filed, nunc pro tunc, as of the first Monday of Dec., A. D. 1869, and complainants may have leave to file proofs until first Monday of February, 1870; and it is hereby stipulated that the deposition of John J. Walker, now on file,

may be read in evidence, subject to objections, except as to manner of taking same, and that this replication may stand to the separate answers of Kerfoot & Pierson, and the other defendants for whom we appear.

6 Dated Chicago, January 25, 1870.

MONROE & McKINNON,
Sol'rs for Def'ts.

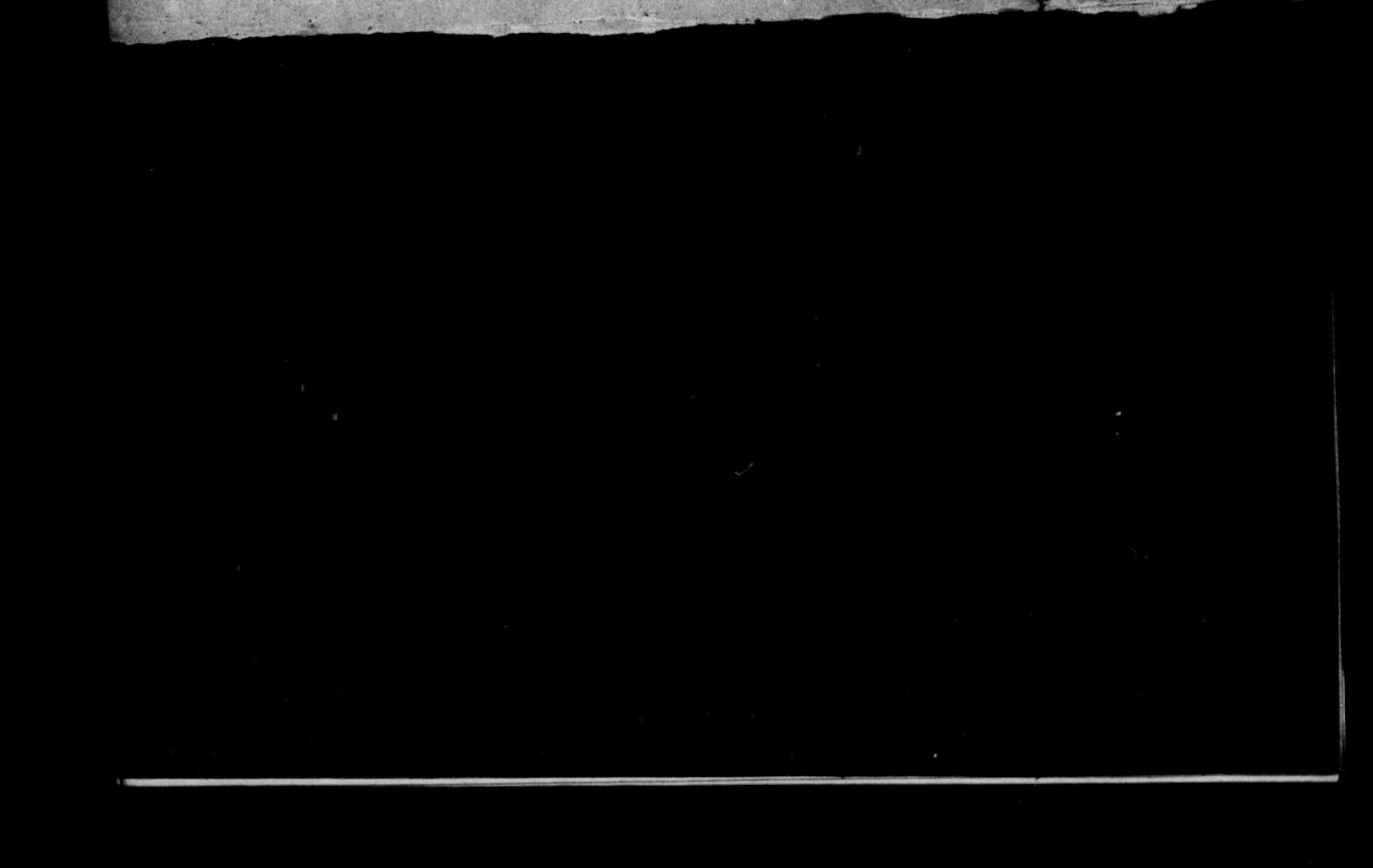
(Indorsed:) No. 684. Ch'y. In U. S. C. C. for N. D. of Ill. In chancery. John J. Walker et al. vs. William M. Derby et als. Replication & stipulation. Hill & Dale, compl'ts sol'r's. Filed Dec. 4, 1869. W'm H. Bradley, cl'k.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be be a true, correct, and complete copy of the original replication and stipulation thereto attached, in said entitled cause in chancery, in said court, of John J. Walker, &c., versus William M. Derby et al., as appears from the original of the same remaining in my custody.

7 Witness my hand and the seal of the said circuit court at my office in Chicago, in said district, this 29th day of September, A. D. 1871.

W'M H. BRADLEY, *Clerk.*



In the Supreme Court of the United States

From the Northern District of Illinois,

AT CHICAGO.

IN EQUITY.

JOHN J. WALKER, JOHN J. WALKER as Executor of ARTHUR F. HOPKINS, dec'd, MARIA WALKER, WILLIAM BARNEWALL, JR., and WIFE, and others, *Plaintiffs and Appellants.*

vs.

WILLIAM M. DERBY, SAMUEL H. KERFOOT, J. FORD PIERSON, and others, *Defendants and Appellees.*

ARGUMENT BY A. R. MANNING.

In the Supreme Court of the United States

From the Northern District of Illinois,

AT CHICAGO.

IN EQUITY.

JOHN J. WALKER, JOHN J. WALKER as Executor of ARTHUR F. HOPKINS, dec'd, MARIA WALKER, WILLIAM BARNEWALL, JR., and WIFE, and others, *Plaintiffs and Appellants*,

vs.

WILLIAM M. DERBY,
SAMUEL H. KERFOOT, S. FORD PIERSON,
and others, *Defendants and Appellees.*

☞ [This suit was begun by original bill against Derby alone, filed April 9th, 1869: Some exhibits were also filed. By agreement (p. 19,) that bill was replaced by an amended one also against Derby alone. After this, a second amended bill, embracing the matter of the first, and more, was filed August 10th, 1869, against all the defendants. And with this, (pr. p. 43 & seq.) the case really begins. References are subsequently made to exhibits going before.

The admission (agreement rather,) of counsel on pp. 280 and 281, in respect to the evidence, should have been set forth at bottom of p. 296 of the *manuscript* record, near

middle of pr. p. 144. The agreement as to Walkers' deposition is on p. 134.

The *ex parte* affidavits on pr. pp. 281–287, filed in April, 1869, while the suit was against Derby alone, upon a motion for a preliminary injunction, were no part of the evidence at the final hearing below, and are not so here. If incorporated in the record, they belong at the end of *manuscript* p. 99, (printed p. 43). The agreements above, made to prevent mistake, show what evidence was before the Court at the final hearing.] The bill is against a purchaser of land from plaintiffs, and their agents,—who it is charged were interested in the purchase.

ARTHUR F. HOPKINS, late of Mobile, Alabama, deceased, several years before his death, had purchased near Chicago, between 31 and 32 acres adjoining the city on the south side, in sections 3 and 4, in To. 38 N. and Range 14 E. This land was originally bought by him in conjunction with James W. Pryor, of New York: But by a sale made by Pryor of his undivided half of the land in section four, now west of State street, to one Akerley,—Judge Hopkins became a tenant in common with that person of those 20 acres; of which each was owner of one undivided half, or ten acres. The land in section three, east of State street, was divided into "blocks" of about six acres $\frac{65}{100}$ each, surrounded by streets and avenues; and a partition of them was made between Hopkins and Pryor, each receiving certain of these "blocks," and parts of others of them, in severalty. The portions taken by Judge Hopkins, consisted of the E.$\frac{1}{2}$ of Block 1, the E.$\frac{1}{2}$ of Block 6, the whole of blocks 4 and 5,—and lots 1, 2, 23 and 24 in Block 12, containing between 21 and 22 acres, east of State street. [See map, p. 71.)

But Hopkins held one-half of these lands (say 32 acres in all,) in trust for plaintiffs, John J. Walker and Maria Walker, one-fourth for each, according to his declaration of trust, under seal dated the 26th day of July, 1865,—of which a copy is set forth in the amended bill (pp. 44–45); two-fourths belonged absolutely to them, (according to this; deed;) although the naked legal title was in him;—and the other two-fourths (one-half) were the property of Judge Hopkins.

By his will, of which an exhibit is made, (p. 23 &c.) and of which John J. Walker was in 1867 and still is the sole executor,—Judge Hopkins did not *devise* his real estate to the executors to sell,—but conferred on them, or the survivor of them,—or if only one should act,—on him, *a power* to sell his (testator's) real estate. And needing money for his uses as executor, Mr. Walker went to Chicago about the last day of February, 1867, and acting for himself, and as executor, and for the other plaintiffs, about the 1st day of March employed the defendants, Samuel H. Kerfoot and J. Ford Pierson, real estate brokers and loan agents under the firm name of S. H. Kerfoot & Co.—to sell the land.

Complainants were all children or husbands of the children of A. F. Hopkins—and citizens of Alabama, and are so still, (except Julia A. Hopkins, his widow, who now resides in New York). They were not acquainted in Chicago, and knew nothing of the value of these lands except as informed by defendant Kerfoot,—who had been several years Judge Hopkins' trusted agent in respect to them. With Kerfoot Mr. Walker had become acquainted in 1865, during a trip to Chicago in relation to this land; and the friendly treatment then received by him of so polite, intelligent and cultivated a person as Mr. Kerfoot was, and his very cordial and obliging entertainment of and apparently generous desire to aid Mr. Walker on this occasion, (March, 1867,) completely won the confidence and friendship of the latter.

He fully explained to Kerfoot & Co. his need of money, cast himself entirely upon them for counsel and assistance, accepting everything as true which they told him, and believed on their information, that Derby was the only person then to be found who would buy the property at the price agreed on. [We do not dwell here on the details of the "confidence game" so skillfully played with Mr. Walker.] In a few days, on the 6th of March, 1867, he as executor of Judge Hopkins, signed a writing in respect to a sale of the land to Derby for $25,600 (about $800 per acre for the whole,) of which he was to receive $8,200 upon the execution of a good deed after examination into the title, and the balance in one, two, and three years, with interest at 6 ℘c. per annum, from the date of the writing, (March 6th, 1867,) to be

secured by mortgage of the property. This writing, the defendants who set it up, say in their answers (pp. 99–116,) was deposited with Kerfoot "to be by him held *in escrow* "until the deed therein mentioned should be made and de- "livered to said Derby, and the title to said real estate "should be examined;"—that is (we suppose) until it should be ascertained that Walker as executor could make a good title.

After investigation into the title, a different arrangement was made: And Walker, on the 19th day of March, 1867, delivered his deed as *executor*, dated the 16th, and received $8,200; and notes dated the 16th of March, 1867, payable one, two, and three years after date at the office of S. H. Kerfoot & Co. for the balance of the purchase money with 6 ℘c. interest from date, and secured by trust-deeds to H. S. Monroe, the attorney of Derby, on the property, were deposited with Kerfoot & Co. to be delivered to Walker, when he should bring and deliver to them or to Derby, a quit-claim deed from himself individually and from Maria Walker and all the other complainants to the property. (pp. 46–7, 99,-114.)

The condition of the title to the property, and the several interests as above set forth of the complainants,—were fully understood by S. H. Kerfoot & Co., and by Derby and his attorney, Mr. Henry S. Monroe; and this arrangement was made under the direction of the latter.

Owing to the absence in France of some of the Complainants, their quit-claim deed was not completely executed until some time in May; it was delivered by Walker at Chicago on the 1st of June, 1867, at or about which time Derby also paid him in money ($10,000) and land at a high price, the balance of the purchase-money for which the notes above mentioned and trust-deeds had been left in the hands of S. H. Kerfoot & Co.—and they were surrendered to Derby. The transaction was then closed. The sale by plaintiffs to Derby was not completed until this time. (Pp. 48, 110, 120.)

Before this time, however, (pp. 110, 119, 126) an agreement was entered into between Kerfoot & Co. on one side, and Derby on the other, by which Kerfoot & Co. were to have one-half of the property purchased of Walker at one-

half of the price which was to be paid to the latter for it; and Derby was to have one-half of S. H. Kerfoot & Co.'s commissions for their services as Walker's agents in making the sale. This agreement, when reduced to writing, was expressed as follows:

"In consideration of three hundred and seventy-five dollars to me paid by Samuel H. Kerfoot and J. F. Pearson,* known as S. H Kerfoot & Co., of the city of Chicago, I do hereby agree to sell and quit-claim to said Kerfoot & Co. at any time before the first day of September, A. D. 1867. said Kerfoot & Co. agreeing to purchase one-half of the property by me purchased of John J. Walker the executor of Arthur F. Hopkins, deceased. It is agreed that if the said Kerfoot & Co. shall pay to me in cash four thousand and one hundred dollars and the further sum of eight thousand seven hundred dollars payable in one, two and three years in equal payments and bearing interest at six per cent. per annum and secured by deed of trust. It is further agreed that if the said Kerfoot & Co. should fail to comply with the condition of this agreement, or fail to make payment before the first day of September, 1867, then this agreement to be void, and the three hundred and seventy-five dollars so paid by said Kerfoot & Co. shall be forfeited to me and retained by me, as stipulated damages for the non-fulfillment of said Kerfoot & Co.'s part of this agreement.

Dated Chicago, March 19th, 1867.

WM. M. DERBY, [SEAL.]
S. H. KERFOOT, [SEAL.]
J. F. PIERSON." [SEAL.]

[Defendants say this was executed after its date.]

No mention of any such agreement was ever made by Derby or Kerfoot or Pierson to plaintiff Walker, or in any way communicated to any of the plaintiffs, either in March, 1867,—or when Walker went back to Chicago in the latter part of May, 1867; although he was then there several days and talked with them about the property and familiarly every day. Nor did he ever hear of this agreement until the next year.

---

*Note how this name is spelled—*Pearson*

Defendant Derby having before the first of September, 1867, refused to convey one-half of the land to Kerfoot & Co. they about that time caused the agreement, (which had before been kept secret) to be recorded as a means of protecting and asserting their claim under it. Defendant Pierson also caused to be put on the record, an affidavit made by him the 3d Sept., 1867, showing an offer to perform on the part of S. H. Kerfoot & Co. their part of the agreement, and a refusal on the part of Derby. And a little more than a year afterwards, on the 5th of Sept. 1868, after Kerfoot and Pierson had caused a bill to be prepared against Derby to compel him to a specific performance of this contract, (see Bill, "Exhibit A," p. 60 & seq. and exhibits thereto,) he came to a settlement with them; and Kerfoot and Pierson executed to Derby a quit-claim deed of all their interest in the property for the expressed consideration of $1,000; which deed also is on record. The real consideration, however, for which this quit-claim deed was executed, was the sum of $7,000 in money, and the West half of Block 5 in the aforesaid section three; which defendant Derby conveyed to one Joseph B. Shepherd for Kerfoot and Pierson, at their request,—and which they through Shepherd sold to another person, Henry H. Honore, for $21,000.

This sum added to the $7,000 received from Derby made $28,000 realized by S. H. Kerfoot & Co., out of the transaction, as the consideration for their quit-claim deed, expressed to be for $1,000. The conveyance was made to Shepherd for Kerfoot and Pierson, to prevent it from being subject to a judgment creditor of Kerfoot's, (pp. 109, 124-5, 127).

About the facts so far stated, it is believed there is no dispute whatever. [This was true up to the very day when this cause came on for final hearing; when evidence in respect to Derby's knowledge of the interest of John J. and Maria Walker was introduced against objection; which evidence will be considered hereafter.]

Defendant Derby continues to own and hold lots 23 and 24 in block 12, before mentioned. The rest of the property has been sold, for prices which may be stated as follows, according to the deeds:

Aug. 1868—The Block 4, to Samuel Wing for (p. 81).....	$	30,000 00
Sept. 1868—The E ½ of Block 1, to Philpot and Picket and W. Hall, for one-half of $70,000 (p. 127)....		35,000 00
" " The W ½ of Block 5, to H. Honore, through Joseph B. Shepherd, for (pp. 83, and 124–5)		21,000 00
The undivided ½ of 20 acres in Section 4, and the E ½ of Block 5, and all of Block 6, to A. Rawson, for $86,000, (p. 81) from which deduct for ½ of Block 6 that Derby bought of Pryor, $21,000		65,000 00
" " The lots 1 and 2 to Mrs. Eliza Derby, wife of James W. Derby (defendant Derby says for (p. 127)		1,500 00
Total, exclusive of lots 23 and 24 in Block 12, $152,500).....	$	152,500 00
The price Plaintiffs got less than eighteen months before was		25,600 00
Profit about $126,900....		126 900 00

Besides the two Lots 23 and 24.

Plaintiffs pray an account of profits, and that these be paid to them,—and the land not sold be re-conveyed to them.

Upon the foregoing facts alone, without reference to the misrepresentations, concealments, false averments, some under oath, and actual deliberate fraud on the part of the principal defendants, which are clearly proved by the testimony,—the complainants were entitled to relief, and,

The Court below erred in not decreeing the relief prayed for.

In transacting business, those concerned in it have constantly to use and rely upon the agency of others. Day by day, as population, productions and wealth increase, as communities advance in prosperity and civilization, especially since the invention and employment of the electric telegraph,—is the need increased, of trustees, executors, attorneys, and agents of every other kind, those, according to the civil law, *qui negotia aliena gerunt.*

The constant intervention and employment of them are absolutely indispensable in all prosperous states. They are necessarily entrusted with interests of the greatest importance and value belonging to others, and are thus subjected

to very great temptations. Yet without general fidelity on their part, disorder, fraud and violence would prevail.

With such convictions pressing upon them, the courts in all well governed countries, have uniformly, steadily, peremptorily prohibited agents from acquiring by means of their agency, any interest adversely to their principals in the property entrusted to them. Upon no single point of all equity law, is there probably a greater number of accordant decisions in England and the United States, and certainly there is no rule of law, the policy of which, chancellors and judges have explained and enforced with more amplification.

In *Michoud vs Girod*, (4 How. Rep. 503 on p. 554) the Supreme Court of the United States say: "The rule as to persons incapable of purchasing particular property, except under particular restraints on account of the rules of equity, is compendiously given by Sir Edward Sugden.

"He says it may be laid down as a general proposition that trustees,—unless they are nominally such to preserve contingent remainders,—agents, commissioners of bankrupts, assignees of bankrupts, solicitors to the commissions, auctioneers, creditors who have been consulted as to the mode of sale, or any persons who by their connection with any other person, or by being employed or concerned in his affairs, have acquired a knowledge of his property, are incapable of purchasing such property themselves, except under the restraints which will be shortly mentioned. For, if persons having a confidential character were permitted to avail themselves of any knowledge acquired in that capacity, they might be induced to conceal their information, and not to exercise it for the benefit of the person relying upon their integrity. The characters are inconsistent. *Emptor emit quam minimo potest, venditor vendit quam maximo potest.* 2 Sugden Vendors & Purchasers 109"

"The principle has been extended to a purchase by an attorney from his client. * * Nor can any arbitrator buy up the unascertained claims of any of the parties to the reference. * * Where a person cannot buy an estate himself he cannot buy it as agent for another. * * * *

"The general rule stands upon our great moral obliga-

tion" [continues the Supreme Court,] "to refrain from placing ourselves in relations which ordinarily excite a conflict between self-interest and integrity. * * * The disability to purchase is a consequence of that relation which imposes on one a duty to protect the interest of another, from the faithful discharge of which duty his own personal interest may withdraw him. In this conflict of interest the law wisely interposes. It acts not on the possibility, that in some cases, the sense of that duty may prevail over the motives of self-interest,—but it provides against the probability in many cases and the danger in all cases, that the dictates of self-interest will exercise a predominant influence and supersede duty. * * * * * * * * * And, therefore, if a trustee though strictly honest, should buy for himself an estate from his *cestui que trust*, and then should sell it for more, according to the rules of a Court of Equity, from general policy, and not from any peculiar imputation or fraud, he would be held still to remain a trustee to all intents and purposes, and not be permitted to sell to or for himself. 1 Story's Eq. (2 Ed.) 317; *Fox vs. Mackreth*, 2 Bro. Ch. R. 400."

And whether one perform acts of agency by employment, or merely as a volunteer, can make no difference as to the responsibilities growing out of that relation. *Dennis vs. McCagg*, 32 Ill. Rep. 429.

"Understanding then by a trustee any one who acts representatively, or whose office it is to advise or operate not for himself, but for others, the principle is general; and the trustee so far as his trust extends, can never be a purchaser of the property embraced under the trust, without the consent of all the parties interested. This principle * * extends to sales by public auction, and to judicial sales, as well as to private ones; and applies to purchasers direct and indirect, in person or through an agent, or by the medium of a person who subsequently re-conveys to the trustee, and to purchases made by the trustee as agent for a third person, and to purchases in which he is to have a partial interest, as well as those in which he is exclusively concerned." (1 White & Tudor's Leading Cases in Equity with Notes of Hare & Wallace, p. 117.) * * *

(P. 139) "The danger of temptation from the facility and advantages for doing wrong, which a particular situation affords, does out of the mere necessity of the case, work a disqualification; nothing less than incapacity being able to shut the door against temptation where the *danger is imminent*, and the *security* against discovery, *great*; as it must be where the difficulty of prevention or remedy is inherent to the very situation which creates the danger."

Indeed, so far do the Courts of Equity go in this direction to insure fidelity on the part of trustees, legal advisers and other agents,—and to secure to those toward whom they stood in that relation, full benefit of all the information acquired by such agents as such, that contracts made directly between them and their former principals, or clients after that relation has ceased, or with other persons for claims against such principals or clients, will be set aside,—or the purchasers be charged as trustees or agents for them,—when purchasers have thereby obtained an advantage, by means of such information.

18 Vesey 308; 2 Dow, 294; 8 Clarke & F. 657,—707.

And in a late English case,—A, a *nephew* of a *former* trustee of B, being sent by his Uncle to advise B, who was 23 years old and of extravagant habits, on the settlement of his debts, and to advance him money for that purpose, offered to give him £7,000 for his estate, under which there were coal mines. Pending the negotiations, in which a *separate solicitor was employed for B*,—A obtained from C, a mining engineer, a *valuation* of the minerals under the estate at £10,000, which he did not communicate to B; nor did he suggest to B to consult a mineral surveyor. B accepted A's offer and died before conveyance. *Held*, in a Bill by B's administrator, that A's purchase could not be sustained."

Tate vs. Wiliamson Law Rep. 1 Eq. 538. (1st Amer. Law Review, p. 114.)

It will be observed that in this case the purchaser, A, was not himself the trustee; he was the nephew of a *former* trustee. It was not unknown to any of them that there were coal mines under the estate; A's offer was made before he had consulted the engineer as to their value; and then what

he obtained was only a valuation, an estimate of the value; which B, who had a solicitor of his own, might also have obtained, if he desired to do so.

In many of the cases referred to there was imputed no actual deliberate fraud. In some of them the purchases were not only *bona fide*, but for full and fair prices honestly paid.

Davoue vs. Fanning, 2 J. Ch. R. 252. *James, ex parte* 8 Ves. pp. 344–8.

In the case of *Michoud vs. Girod* (4 How. R. 503) the sale was made of an estate by the executors who were interested in the estate, by order of the court having jurisdiction over it, under the superintendence of the Judge,—at public auction, in parcels, for the sum of $84,755 40, (see page 510,) a price not impugned as inadequate—and in February, 1814, when war existed between the United States and Great Britain: and the suit was not brought until about 25 years or more afterwards, when the property had become very much more valuable.

The purchase was made by the executors, not personally but through others, who received conveyances of the property, and afterwards conveyed it to them. The instruments conveying it, however, were placed upon the public records; the property went openly, without concealment into the possession of the executors; and the plaintiffs, who resided in France, had information of the sale to the executors (their brothers,) at least as early as 1817. Much of the property consisted of a plantation and slaves, the ownership of which it would be difficult to conceal.

On behalf of defendants, it was among other things, urged: "In this case there was no secrecy or concealment, and there could be no discovery in relation to the fact of the sales to N. Girod. The property was not kept concealed under the name of a third person, but in his own, and placed on the public records as belonging to him." (p. 539.)

And again—"the court cannot permit the parties to speculate on the chances of war. The appraisement, the basis of the mortuary proceedings, is not impugned; nor is the adequacy of the price. They have waited until the growth of the country has given an increased value to real property;

and now ask the court, not to do justice, but to accomplish for them a speculation. * * * *

"What is this but a speculation on events, which law and faith repudiate?" (pages 542–3.)

To this and much more,—the court unanimously answered: "We concur with the learned Judge in the Circuit Court in setting aside the purchases by which Nicholas Girod and Jean Francis Girod became the possessors of their testator's entire estate. But the morality and policy of the law as it is administered in Courts of Equity, induce us to add that those purchases were frandulent and void, and may be declared to be so, *without any further inquiry*, upon the ground that they were made by the intervention of persons who were nominal buyers of the property for the purpose of conveying it to the executors." [Just so in the cause now before this court, Derby was nominal buyer of *one-half* of the property for S. H. Kerfoot & Co.; whose interest, however, it was not their purpose or Derby's to disclose by putting it upon the public records.]

"Such a transaction carries fraud on the very face of it," (continues the court.) "It matters not whether the sales are made with or without the sanction of judicial authority, or with ministerial exactness. The rule of equity is, in every code of jurisprudence with which we are acquainted, that a purchase by the trustee or agent of the particular property of which he has the sale, or in which he represents another, whether he has an interest in it or not,—*per interpositam personam*,—carries fraud on the face of it."—(p. 553.) See also 13 Vesey p. 602-3; *Sanderson vs. Walker.*

See also *Kerfoot vs. Hymen*, 46 Ill. Rep.

It is hardly necessary to add, that, of course, "a third person cannot acquire any interest in a trust estate through a violation of duty by the trustee, of which he has notice." And this, though he has only a knowledge of the fact that the purchaser was trustee or agent, and did not in any way participate in the fraud of the latter,—but was only a subsequent purchaser from him. *Joor vs. Williams*, 38 Miss. R. 546; *Dunbar vs. Tredennick*, 2 Ball & B. 304; *Lincoln vs. Clafflin*, 7 Wallace R. on p. 138.

See also, 1 Story's Eq. Ju. § 422; 2 id. § 1257.

And it has been held he may be charged with constructive notice. *Taylor vs. Hopkins*, 40 Ill. Rep. pp. 447–8.

If the trustee, [that is, the purchaser who is a forced trustee,] has sold the property before the bill is filed, he will be compelled to account for the profits; and if by his own conduct it has become impossible to ascertain with exactness what profit was made, he will be charged with the largest amount that the case will reasonably admit of. *Brackenridge vs. Holland*, 2 Blackf. 377, 383.

"And where there has been actual conscious fraud, a trustee would probably not be allowed for the value or cost of improvements."

1 W. & T. Leading cases by Hare & Wallace, (top p. 145.)

2. It has been insisted, however, that a written agreement to sell on specified terms was entered into by Walker & Derby, on the 6th of March, 1867,—and the service of S. H. Kerfoot & Co. for plaintiffs was then performed, and their relation as agents at an end. Did the parties so consider it at the time? Did Derby consider the matter closed when he affected to desire to withdraw from the purchase, and in fact did not carry out the particular contract written out? Did Kerfoot & Co. consider that they were no longer agents for Walker, when nearly two weeks afterwards they were going through the forms of angry remonstrance and importunity as such, with Derby, as described in Kerfoot's letter of February 29th, 1868, to Mr. Walker? (pp. 73–4.)

The agreement, however, was merely preliminary, and made to specify the terms on which, if they should trade, they were agreed. The defendants themselves say (and they cannot depart from their own solemn averments,) in their answer drawn up by lawyers to be used in a court, and therefore carefully using law phrases in their legal sense, (pp. 99, 106) that this agreement was delivered to Kerfoot, "to be *by him held in escrow* until * * * the title to said real estate should be examined," the meaning of which is, *that it was not to be fully binding* until it should be ascertained that Walker, as executor, could make a good title.

Moreover, this agreement was superseded by the arrangement made, March 16th & 19th, 1867, which, though in the

main agreeing with, yet materially differed from that preliminary paper, (which see, p. 146,); at least they were not the same: For whereas by the latter, Walker, when he should thereafter make a complete conveyance of the property, was at the same time, himself to receive the money, notes, and trust deeds for the price, with interest from March 6th, (the date of the paper,) without till then making any deed to Derby,—by the new arrangement of March 16th and 19th, he made a deed effectual to convey then one-half of the property (and he supposed all of it,) for less than one-third only of the price; while notes payable at the office of S. H. Kerfoot & Co. for the rest of the price, with interest from March 16th, (instead of 6th,) and trust deeds to secure them were deposited with S. H. Kerfoot & Co. *in escrow* until the auxiliary quit-claim deed, to be executed by all the plaintiffs, should be delivered. One incomplete arrangement was thus substituted by another, which suspended the completion of the transaction of the sale until the quit-claim deed should be forthcoming and delivered.

But an unanswerable refutation of any such argument as that the sale was complete, is afforded by inquiring what title or right Derby, and S. H. Kerfoot & Co. obtained to the property in question, before the first of June, 1867?

The contract of March 6th, even if concluded instead of remaining in *escrow*, was entered into by Walker *as executor* merely, and reached only the property which *as executor* he had the power to sell,—"the property of said estate," and this, notwithstanding the parties, some or all, erroneously supposed that it operated on all the land in controversy.

The same is true also of his deed (p. 4,) to Derby, dated March 16th, and delivered on the 19th, (the very day of the date of the agreement for a partnership in the property, between Derby on one side and Kerfoot and Pierson on the other.)

In the commencement of the deed it is recited that Walker is a party to it "as executor of the last will and testament and as trustee of the estate of Arthur F. Hopkins," &c.; (of which he was trustee, as the will shows, only as executor.) Next the deed *witnesseth* that he "*by virtue of the power and authority to him given by the said last will and testament*," and

not otherwise, conveys the property to Derby. Then at the end it is signed, "John J. Walker, executor of the last will and testament of A. F. Hopkins, deceased." (p. 5).

Now the will was then there present, and was on record in Chicago. It conveyed no title to Walker the executor. It conferred on him as such, *a power* only to sell *testator's* property. One-half of the property in suit, as is shown by the declaration of trust dated July 26th, 1865, under the hand and seal of Judge Hopkins,—did not belong to him, but to John J. Walker and Maria Walker, respectively, one-fourth to each. And the naked legal title which was in Hopkins, (without any beneficial interest,) not being devised, descended to his heirs at law, who are also the legatees under the will. Hill on Trustees, p. 235, (marg.) near bottom.

Even a will that *devises* and *bequeaths* property of whatsoever kind and wheresoever situate, to the executor to be sold, —instead of merely giving a *power* to sell,—does not pass property of which testator was only trustee,—when it appears, as in this case it does, (see item 4th of the bill, p. 24.) that the proceeds are to be disposed of in legacies, or otherwise, as testator's own proper estate. Horsfall *ex parte* 1 McClel. & Yo. Exch. R. 292; *Lindsell vs. Thacker*, 12 Sim. 178.

Therefore, John J. Walker, "*as executor*," of the will and "by virtue of the power and authority to him given" by it, could convey, (as the defendants Derby, Kerfoot, and Pierson, and their legal adviser, Mr. Monroe, well understood,) only Judge Hopkins' one-half of the property: conveyance by his heirs at law of the legal title to the other half, and by John J. Walker and Maria Walker, of their beneficial equitable estates therein, was necessary to the complete transfer of this other half. Accordingly this was stipulated for; and until this conveyance, the quit-claim deed executed by them all, should be delivered, the notes, (and trust-deeds to secure them,) for much the greater part of the price, were withheld.

This necessary deed was not delivered before the 1st of June, 1867. Until that time there was neither contract nor conveyance by which Derby, or he and Kerfoot & Co. could assert any title or right to any other than Judge Hopkins'

half of the property, which is the subject of this controversy. Walker, doubtless thought that, as executor, he might sell all the property, and account to the various parties after the payment of the price, for their respective shares. And it seems pretty certain that it was the desire of the schemers with whom he was dealing, that he should continue to think so,—in order that nothing might transpire before the quit-claim deed could be got from France, (where some of the plaintiffs were,) that should induce a refusal to deliver that deed. And to keep up apparently the same idea in all the complainants, Kerfoot, who wrote (p. 101,) the quit-claim deed in perfect form, artfully added at the end a clause which without the least impairing the operation of the deed, assures those who sign it that its "sole purpose and object" are to "sanction and confirm" a sale *already made* by Walker as executor. (p. 7.)

Not only did Walker not profess to convey or to contract to convey except as executor; but he had no authority to do more than that; save that he might have conveyed his equitable title to his one-fourth, the legal title to which had descended to the heirs of Hopkins. He had no letter of attorney from them, or from Mrs. Maria Walker, and was not legally constituted their agent; although he acted on their behalf in employing Kerfoot & Co. as agents to sell, believing he had the right to do so, and that they would, if necessary, ratify what he should do. The ratification was given by the delivery of the quit-claim deed about the 1st of June, 1867.

Kerfoot & Co. were employed, (as the bill and answers allege and admit) "to sell said real estate for complainants." So, since the sale was not completed till the 1st of June, either by an executed, or an executory contract binding upon the plaintiffs, the obligations and duties of Kerfoot & Co. as their agents in effecting the sale, continued until that time.

Yet long before that time, as they and Derby admit, (pp. 110, 119, 126,) they had entered into the agreement dated March 19th, for an equal interest with Derby in the property: and their interest and influence were thus secured in procur-

ing the consummation by plaintiffs, who were in no way bound, of the sale, to which Walker had given his assent.

There is (it would seem) no chance of an escape by S. H. Kerfoot & Co. and Derby from the position into which the rules of law force them, of trustees for the plaintiffs.

See *Dunbar vs Tredennick*, 2 Ball & B. p. 314; *Ex parte Lacey* 6. *Vesey*, 627; *Woodhouse vs. Meredith* 1 J. & W. 204.

And even if the sale had been fully completed, when the agreement of March 19th was entered into,—this of itself, following so soon after the consummation of the sale would be conclusive evidence of collusion,—against which the court would not listen to any denials of the parties, or testimony of witnesses.

Abbot vs. Amer. Hard Rubber Co. 33 Barb. R. 578.

Rosenberger's Appeal, 26 Penn. St. Rep.

Kerfoot had long been a real estate agent in Chicago, and in charge as such of this and much more property on the south side of the city. His business and shrewdness made keen by long exercise, qualified him to perceive that improvement and speculation began to tend actively in that direction. Who can know how many other persons there were besides Martin Andrews, (see his deposition, p. 151,) that frequently and eagerly inquired of him and his partner for "south-side property?" Very few persons could foresee so well as they and Derby (himself a buyer and speculator,) that real estate there would rise rapidly in value. This skill they acquired as a trained practical miner acquires his to learn in many cases from surface indications, the existence of valuable mineral ores in the earth below. The plaintiffs were entitled to the fullest benefit and exercise, in the making of bargains for them, of the skill and knowledge of Kerfoot & Co. The agents had no right to use these in making fortunes for themselves, by speculating with another in the property of their principals.

II. Allusion has been made to evidence introduced at the hearing, to which plaintiffs objected at the time, as irrelevant and otherwise illegal,—in respect to *Derby's knowledge* of the interest of John J. Walker and Maria Walker. This testimony of Derby himself, and Mr. Monroe, his counsel,

and also a defendant in this cause is on pp. 272-3; and the objections to it are on pp. 273-4. No such pretence of ignorance is set up for Kerfoot and Pierson: And Derby is precluded from setting it up, by the admissions in his answer.

In the admission of the testimony there was error.

But first, what does it matter whether Derby knew the precise interests of the complainants or not? What if he did suppose the entire property belonged to the estate of Judge Hopkins? The *fact* is that it did not; and the further fact is, that *it was agreed that the sale should not be complete until the delivery of a deed to be executed by all the complainants, which every one of them was legally free to refuse to execute.* The consummation of the sale was thus suspended by agreement. This was the effect of the arrangement made the 16th and 19th of March, and of the deposit *in escrow* with S. H. Kerfoot & Co. of the notes for more than two-thirds of the price, and of the trust-deeds to secure the payment of them. (pp. 99, 116-17.) Yet, while these agents, Kerfoot and Pierson, are themselves holding these papers under the arrangement, out of the reach of complainants, whom they know to be greatly in need of the money, that could now only be raised by means of them,—and after Walker had delivered his deed as executor, to Derby, thereby conveying to him one half, (Walker supposed all,) of the *land*, for less than one-third of the price,—they, Kerfoot and Pierson,—(according to their and Derby's allegations,) acquire of Derby an equal interest with him, as partners in the purchase, which is yet to be completed,—and so place themselves in interest with Derby as buyers,—confederating with him—adversely to their principals, the complainants.

It may be argued that Derby, ignorant of Hopkins' declaration of trust, thought he had a complete title by the executor's deed; and he, therefore, might innocently sell a part to Kerfoot and Pierson. It may be asked,—if he really so thought, why then did he not hand over the notes and trust-deeds for the price? But a better answer is,—that he *knew it had been agreed* that the sale should not be complete until the execution and delivery of the quit-claim deed: And if before the final consummation any discovery should be made that would justify complainants and Walker in refusing to

complete the sale,—as for instance, discovery of a fraud practised by Derby in the negotiations, either upon Walker alone, or upon the agents themselves,—complainants and Walker were entitled to the aid of their agents to put a stop to the proceedings while yet in progress,—and should not find in them adversaries interested in preventing such redress,—interested *in preventing* while yet the transaction of the sale was incomplete,—even the *discovery* of any such fraud. To have this aid, was the right of complainants. And Derby knowing this, (for he was bound to know it,) transferred to Kerfoot and Pierson, an interest which he knew they could not honestly obtain.

Therefore, if the testimony of Derby and Monroe was unquestionably admissible—and on comparison with the other evidence should be found entitled to implicit belief—yet, the court below erred in dismissing the bill.

Let us now examine the pleadings in regard to Derby's knowledge about the title.

At the beginning of the bill, (p. 44,) the respective interests of complainants in their own right and as legatees under the will exhibited,—(naming such as are legatees,) are explained. The declaration of trust of July 26th, 1865, is set forth, showing that Hopkins, the testator, held one-half of the land in controversy "in trust for the said Maria "Walker and John J. Walker, one-fourth of the same to "each." And the allegation is made at the threshold of the cause that "although the *legal title* to all said real estate was "in the said Arthur F. Hopkins at the time of his decease, "yet by virtue of" the declaration of trust, "the complain-"ant, John J. Walker, was the owner of the undivided one-"fourth, complainant, Maria Walker, was owner of another "undivided one-fourth, and complainants, John J. Walker, "as executor, and the other complainants named, were "jointly the owners of the other undivided two-fourths of "said real estate. (p. 45.)

"and that afterwards, on said day, [March, 1867,] at Chi-"cago, aforesaid, *complainants*, by and through the com-"plainant, John J. Walker, *as agent and as such executor*, "*acting on their behalf, and for himself*, employed defendant,

"Samuel H. Kerfoot, and defendant J. Ford Pierson," real estate agents and loan brokers at Chicago, and partners, as "S. H. Kerfoot & Co. to sell said real estate *for said complainants*,"—which they undertook, for a reward mentioned, to do: and complainants further charge "that in breach of "the trust *thereby* in the said S. H. Kerfoot & Co. reposed "and confided, and by said S. H. Kerfoot & Co. undertaken "and accepted,—which trust *was then well known and understood by the defendant, William M. Derby* * * * * "the defendant, William M. Derby, secretly and covertly "uniting, combining, and confederating with the said S. H. "Kerfoot & Co. * * * agreed to become with the said "S. H. Kerfoot., the said agents of complainants, (well knowing them to be such,) co-purchasers and joint owners of such real estate," with Derby under his name.

And again—after setting forth the agreement between Derby and Kerfoot and Pierson, dated March 19th, 1867, whereby they were to become jointly interested with Derby in the property,—it is further alleged (p. 49, near top,) as a circumstance of and attending that transaction, (about which transaction Derby is especially interrogated, p. 55, at bottom,)—"that as was *well known to the defendant, William "M. Derby*,—the defendants, Samuel H. Kerfoot and J. Ford "Pierson, were agents of *complainants*, employed and paid *as "aforesaid*, to make sale of said property, and had no right "as against complainants, either directly or indirectly, to "acquire such interest in said property, and in the sale from "complainants to said Wm. M. Derby."

Now here is a distinct averment of the respective interests of complainants, and that although the legal title was in Judge Hopkins at the time of his death; yet John J. Walker and Maria Walker each had an equitable title to one undivided fourth, and that the other two-fourths belonged to Walker as executor, and the other complainants named as legatees under the will (of which there is an exhibit,); and that so owning the property, the "*complainants*, through "Walker as agent and as such executor, acting on their be-"half and for himself, employed" S. H. Kerfoot & Co. to sell it "*for complainants*;" a trust which Kerfoot & Co. undertook, and which was "well known and understood by Der-

by;" and again, that it "was well known" to him, Derby, that S. H. Kerfoot & Co. were "agents of *complainants*,—employed and paid as *aforesaid*, to make sale of said property—and had no right" to acquire the interest bargained for by the written agreement mentioned.

How does Derby answer these allegations? At the beginning (p. 113,) he admits the several interests of complainants exactly as set forth by them, and that "although the legal title to all said property" was in Hopkins, the testator, at his death,—"the complainant, John J. Walker, "was the owner of the undivided one-fourth, complainant "Maria Walker, was owner of another undivided one-fourth, "and the complainant John J. Walker, executor, and the "other complainants named, were the owners of the other "undivided two-fourths."

And after thus restating and admitting the condition of the title,—he says further that he is informed and believes, and therefore admits "that *complainants* by and through the "complainant, John J. Walker, as agent, and as executor "aforesaid on their behalf and for himself, employed * * "S. H. Kerfoot & Co. to sell said real estate for *complain-* "*ants*." He then denies knowledge of the terms of compensation.

After this there can be no dispute as to the respective interests of complainants, or as to the employment by them according to their respective interests,—of Kerfoot & Co. to sell the property for them.

Derby answers to these points without any demur,—after ample time for reflection and consultation with counsel,—and as if they were matters that he had all the time understood. It is true, he does not say at the same time and place *when* he was informed of them, or expressly admit whether he did or did not so understand them from the beginning, as charged in the bill. Neither does he anywhere else in his answer,—although he admits the making of the agreement of March 19th, 1867, with Kerfoot and Pierson, (p. 119,) and was interested and undertook to defend it,—say or intimate that he was not then and all the time well informed in regard to the matters mentioned.

Now, this omission under such circumstances, and in an

answer which prolixly repeats almost all the circumstantial statements of a prolix bill,—to deny anywhere facts which he is charged with knowing and fully understanding all the time, and which he admits were facts,—and this, too, when a denial of such knowledge would naturally occur as furnishing some excuse for a transaction that he was trying to vindicate,—is not only convincing evidence that he did have such knowledge and understanding as charged,—but is an admission *by the pleadings* that he did have such knowledge and understanding. When he undertook to answer to and admitted a main fact about which he was interrogated, (being bound to answer also as to all the circumstances,) and did not deny the circumstances charged—he admitted the circumstances not denied, and which, if they existed, must be within his knowledge.

Grady vs. Robinson, 28 Ala. Rep. p. 300;
Smilie vs. Silers' Adm'r, 35 Ala. R. p. 94;
2 Dan. Ch. Pl. & Pr. 977; Note (2) of Perkins.

But we are not left without express admissions of knowledge in other parts of the answer. Besides expressions in several places that indicate a knowledge that Walker, as executor, could not make a complete title to the whole,—Derby expressly shows that Walker's communications to Kerfoot & Co. before, and to himself on his first introduction to him, about the ownership—were entirely frank and unreserved. In an interview between Kerfoot and Derby before the latter knew Walker,—Derby says: (p. 115.) "Thereupon the said "S. H. Kerfoot stated and told this defendant that com-"plainant, John J. Walker, *part owner and agent for the own-"ers* of said premises, was then in the city of Chicago, for "the purpose of selling said land and real estate," &c. And Derby being asked to go and see Walker at Kerfoot & Co'.s office, consented and did so;—"at which time and place "[Derby says,] the said John J. Walker stated and told "this defendant that he, said John J. Walker, *as owner and "agent of the owners* of said premises, was then in the city "of Chicago for the purpose of selling" them.

And subsequently after Derby had (as he says,) examined the land, he met Walker again at Kerfoot & Co.'s office, and "then and there offered to purchase the said premises of

"and from the said John J. Walker, and of *and from the* "*other owners thereof and parties interested therein.*"

We could not, if we would, avoid understanding Derby as saying that from the first, he was informed that there were several owners of the property, and that upon making the inquiry, which as a buyer he was thus put upon, and would, as a matter of course, have certainly made,—he learned that the respective interests were the same, which, *using some of the same expressions*, he has previously explained them to be. There is no complaint or pretense that Walker misrepresented any of these interests.

We have no occasion here to invoke the aid of the rule that an answer is to be construed most strongly against him who makes it. A solicitor who should in this case take testimony to prove on behalf of plaintiffs what is so distinctly admitted by defendants, and taken out of issue—would be reprimanded and charged with the costs of the depositions. No evidence to a point admitted by the pleadings is receivable on either side; and, therefore.

The court below erred in admitting the testimony of Derby and Monroe.

And *with or without that testimony, upon the uncontroverted facts of the case*, the decree should have been in favor of complainants below. [See Addendum at end p. 77.]

In Alabama, since 1848, the property of married women has, by the laws of that State, been made their *separate estate ;* which the husband cannot dispose of, and which is not subject to his debts or contracts.

And the laws of the several States are judicially recognized (without proof of them,) by the courts of the United States,—the laws of other States, as well as of that in which the court may be sitting.

Owings vs. Hull, 9 Peters' R. 607, 624-5.

2 Sumner's R. 401 ; 4 McLean's 521.

III. Hitherto, the argument in this cause has been upon facts which it is supposed will not be disputed, except, perhaps, as to Derby's knowledge of the title.

How does the case appear in the light of all the evidence?

In making this inquiry, it should be borne in mind that

in cases of this sort, where agents and persons associated with them have acquired an interest in the property which was the subject of the agency,—the *onus* is on them to vindicate themselves from the presumption of fraud.

"The duty of a steward and land agent requires *him to* "*show* that a transaction so singular in its nature, and in "general so little beneficial to the lessor, was *in all its cir-* "*cumstances* fair."

Ormond vs. Hutchinson, 16 Ves. 107.

"In all dealings between persons in confidential relations, "*or having just emerged from them*, the *policy* of the law is "to look with great suspicion on the transaction."

Hoffman St. Coal Co. vs. The Cumberland C. & I. Co. 16 Md. Rep. p. 494.

In a case analogous to this, *Charter vs. Trevelyan ;* though 37 years had elapsed, and Charter had died, the House of Lords affirming the decree in chancery, set aside the sale, holding, as Lord Campbell said,—"the *onus* lay in this "case on the appellants clearly to prove that the transac- "tion was fair." 11 Cl. & Fin. 733–4.

"It is necessary to say broadly that those who meddle "with such transactions take upon themselves *the whole* "*proof* that the thing is righteous." *Gibson vs. Geyes*, 6 Ves. p. 276.

"Whenever a fair, judicial doubt exists whether the party has not availed himself of the *opportunities* of a confidential relation to obtain some selfish advantage, it would be too dangerous, considering the relations of the parties, to allow a transaction of that suspicious nature to stand."

1 Ves. Jr. (Sumner's Ed.) 221 *in notes.*

And although the answer be received where responsive, as equivalent to the testimony of one witness, (but see 2 Dan. Ch. Pl. & Pr. p. 840, 3 *Amer. Ed.* of 1865,) to be therefore overcome by more than the testimony of one witness, yet the evidence to overcome the answer "may be by way of inference "from facts and circumstances ; which are sometimes *more* "*convincing* than direct testimony, and *in the development of* "*fraud*, furnish almost the only source to be relied on." (21 Maine Rep. 273.)

And "when a person will, in his answer under oath, state

"that to be a fact which *he believes to be true*, when he has at "hand the means of ascertaining whether it be true or not, "—it is, if not true, a circumstance strongly indicative of "fraud."

Gould vs. Williamson, 21 Maine Rep. 273.

See also, *Clark vs. Riemsdyk*, 9 Cranch R. 153, 100.

The recital in the former part of this argument, of facts which (it is presumed,) will not be disputed, makes it unnecessary to set forth here long extracts from the pleadings and evidence.

The following are the only charges made in the bill that it is thought proper to discuss further:

1st.—That Kerfoot had been agent of Hopkins in his lifetime, touching this property. (p. 50.)

2d.—That it was sold to Derby by plaintiffs, through the counsel, advice, and agency of Kerfoot & Pierson, (p. 50,) "as was well known and understood by defendant Derby."

3d.—That it was sold to Derby for less than its value, and for less than had been offered for it. (p. 49.)

4th.—That defendants, Kerfoot and Pierson, on one side, and Derby on the other, while the former two were agents for plaintiffs, to sell the land for them, secretly and corruptly confederated on or about the 16th of March, to purchase it in the name of Derby for their joint benefit; (pp. 45–6,): after which, on the 19th day of March, 1867, not knowing of such confederacy, and while reposing confidence in said agents, complainant Walker made and delivered his deed, as executor, of all the land in controversy to Derby,—and received from him $8,200 in money; and Derby's promisory notes for the balance, $17,400, of the whole price,—($25,600,) dated March 16th, with interest at 6 per cent. from that day, payable at the office of S. H. Kerfoot & Co., and his trust-deeds to Monroe (the attorney of Derby) to secure payment of said notes, were also on said 19th of March, deposited by Derby with S. H. Kerfoot & Co., to be retained by them *in escrow*, until the quit-claim deed aforesaid of all the plaintiffs should be executed and delivered to Derby.—(pp. 46–7.)

5th.—(p. 47–8) That they, "to further complete said joint

purchase, or to share and own the said real estate together, "and to *express* the understanding and agreement by them, "*secretly*, corruptly, and covertly made as aforesaid, *under* "*date of March* 19th, 1867, made, executed, and interchang- "ably delivered"—the writtten contract between them before set forth: which was kept concealed from plaintiffs till about the time this suit was brought.

6th.—(p. 47.) That Derby was to receive from Kerfoot & Co. one half of their commissions for making the sale: (p. 47.)

7th.—(p. 50,) That in February, 1868, it having been intimated to plaintiff Walker that Kerfoot, while agent for plaintiffs, had had an offer of a higher price for the land than plaintiffs got for it,— and was interested with Derby in the purchase. Walker wrote to Kerfoot, February 24th, a letter (Exhibit C, on p. 70,) on the subject,—and received in reply (after going to Chicago about the middle of March afterwards—see pp. 142-3,) the long reply (Exhibit D, pp. 71, 77,) dated February 29th, 1868; which was mailed in Chicago, March 14th, 1868, (p. 142,)—and was concocted, it is charged, (p. 52,) to cover up and conceal the truth by subterfuges and falsehoods; (an effect which it did produce for some time on Kerfoot's friend, Mr. Walker,)

8th.—(pp. 49, 50,) That Kerfoot and Pierson, having offered to perform their part of their agreement of March 19th, 1867, with Derby, and Derby refusing to perform his,—they caused the agreement and an affidavit (Exhibit B, p. 69,) of their offers to perform, to be recorded in the Recorder's office, Chicago,—and afterwards. (p. 52,) about the 1st of September, 1868, caused a bill in chancery by them as plaintiffs, against Derby, to be prepared, to compel him to a specific performance of the agreement; (See the bill with its exhibits all complete, pp. 60, 69,—and the account it gives, pp. 60, 61, of the making and writing of the agreement,) whereupon (p. 52,) Derby settled with them, paid them money, (amount unknown,) promised them more out of the proceeds of the sales,—and they executed to him a quit-claim deed, dated Sept. 5th, 1868, of all the land; in which, however, they remained, some way or other, still interested.

Walker being at length convinced, and the other plaintiffs learning that they had been defrauded, they brought this suit, and offer (pp. 54–5,) to pay or allow defendants, Derby and Kerfoot, and Pierson, what they have paid to plaintiffs, and the court may think them entitled to, and pray (pp. 58, 59,) that said defendants be required to account with plaintiffs, and pay to them the profits made by the sales of portions of the land,—and to re-convey such as remain unsold, and be enjoined not to sell, or incumber these, (p. 59,)—and not to interfere with the money, notes and securities due from or executed by purchasers of the property, but (pp. 58, 59,) to pay and deliver them over to a receiver,—and for such further or other relief as may be appropriate.

Other defendants are also made to the bill, purchasers of portions of the property,—to answer and account for what they owe.

1st.—To the first charge above, in respect to Kerfoot's agency for Hopkins, Derby answers—not informed. Kerfoot and Pierson, (pp. 104–5.) the former upon knowledge, the latter upon information and belief, "deny that de-"fendant Kerfoot was the agent of the said Arthur F. Hop-"kins during his lifetime, touching this property, or had "charge thereof as such agent; as the letter marked 'Ex-"hibit E,' in said amended Bill shows, that said Kerfoot "on the August 31st, 1866, *for the first time*, knew what, "*if any, lands* belonged to Arthur F. Hopkins' estate, and "that J. W. Pryor, *for whom alone* said Kerfoot had always "acted, touching said lands,—then gave said Kerfoot the "information," &c.

Will it be believed, that June 2d, 1855, Kerfoot, by a letter of attorney to James H. Rees and Samuel H. Kerfoot, (p. 130,) recorded in Chicago, (book 95, page 464, of deeds,) was made an agent of both Pryor and *Hopkins*, in respect to these lands—and that the *power to sell and convey* thereby given, continued till December, 1860, when it was revoked by Judge Hopkins,—by an instrument for that purpose, recorded in Chicago, book 205 of deeds, page 462? (p. 131.)

Doubtless Kerfoot's correspondence had been with Pryor, (who acted for both, and was nearer to him;) and being

aware of this, and forgetting for a moment those instruments,—and tempted by an apparent confirmation in the letter of 31st Augnst, 1866,—(p. 78,) he boldly denied any agency for Hopkins, and any knowledge of Hopkins' interest, "*if any*" *he had*, in the lands.

Walker, in his deposition, (p. 138,) proves that so late as in 1865, (while Judge Hopkins was living,) he went for Hopkins to Chicago, to see his agent Kerfoot, and did there see him on the subject;—and corresponded with him about these lands, after the death of Hopkins, in November, 1865.

Pryor, (p. 162,) says: "Mr Hopkins and I were here [in "Chicago,] in 1854, and we had no other business here than "in connection with the real estate. We were in the office "of Mr. Kerfoot a great deal, and I know Mr. Hopkins said "a great deal. * * * * * I know that we informed "him [Kerfoot,] that Judge Hopkins had an interest in the "land."

The letter of attorney above mentioned, dated June 2d, 1855, recites in it (p. 130,) that Hopkins, who is first named in it,) and Pryor were "joint-owners" of this identical land, and was acknowledged by both before officers in Chicago; (p. 131,) therefore, they were both there in 1855, as well as in 1854. And in all his changes of partnership, Kerfoot was the agent (as Pryor's testimony shows,) who always had charge of and paid the taxes on this property. And it is not improbable that he had that paper in his office when he testified.

Again, Pryor says (pp. 179–80,) that in July, 1856, (in the deposition it is erroneously written 1866,—see date of the deed in the abstract of title, p. 278,) he and Judge Hopkins (in New York,) divided this land between them by a deed of partition, which he (Pryor,) sent with a letter mentioning the parcels allotted to himself, to Kerfoot, instructing him to have it recorded, and then to return it to him, (Pryor,) and to write to Judge Hopkins, (whose deed it was as much as it was Pryor's,) at the White Sulphur Springs, Green Briar county, Virginia; and that a few weeks afterwards, the deed recorded, was returned to him (Pryor,) by Kerfoot.

Moreover, about two months before, (p. 161,) in May, 1856,

Kerfoot himself, and as a chief actor, "attended to the whole matter," through a Mr. Greeley, of the division of this property into blocks by streets, by consent of the parties, of whom Hopkins was one,—represented by Pryor,—while Kerfoot himself represented another person, and was, therefore, bound to know who all the parties interested were, and that they consented to the division as made, (see abstract (p 278,): after which time the whole tract in section 3 was generally and familiarly known as "Pryor and *Hopkins* Addition" to the city (pp. 69, qu. 21, 236, 246,) or "Pryor & *Hopkins*' Subdivision," as it is called, probably twenty times in the evidence, and as it is described by Kerfoot himself in the first paper he drew up, March 6th, 1867, in relation to this sale, (p. 146,) and also in his letter of August 31, 1866, (p. 78,): which, so far as this point is concerned, shows only that he had then received "a letter from Mr. Pryor, giving us the *numbers* of the lots" that belonged to Hopkins' estate, in what Kerfoot calls "the Pryor and Hopkins' Subdivision."

Is not the denial "upon knowledge" by Kerfoot that he had ever been agent for Hopkins "touching this property," and the statement that he, "August 31st, 1866, for *the first time* knew what, "*if any lands*," belonged to his [H.'s] estate —a most extraordinary averment?

2d.—To the second point above, Kerfoot and Pierson say: "These defendants deny that the sale of the same was made by or through the counsel, advice, or agency of the defendants,—or that the same was well known or understood by said Derby." (p. 105.)—And Derby denies that he knew or understood that it was by their counsel, advice, or agency, that the land was sold to him. (p. 121,)

This is, obviously, an effort to throw off responsibility for the sale by denying their agency in it, and charging it exclusively upon Walker; an effort that was first made in the answer by Derby when the suit was against him alone. [And it was upon this point mainly, supported by *ex parte* affidavits of Kerfoot and Pierson, when there were no letters or account before the court, that a preliminary injunction was refused, and the consideration of the right to an injunction deferred until the evidence should be taken.]

And both they and Derby say, that Derby "made the

said purchase in good faith *solely and alone* of and from the said John J. Walker as hereinbefore set forth." (pp. 105, 117.)

Now all of these parties admit, (what could not be gainsayed,) that Kerfoot & Co. were employed as agents to sell the property. The negotiations were carried on at their office: (they in fact, or Kerfoot, wrote the first contract of March 6th, and all the deeds:) and on the 19th of that month they made out their account against Walker for 836\frac{25}{100}$ with these items in it: (p. 47,)

For abstracts of title to the land				$ 85 00
" Stamps on deed to Derby				26 00
" Recording trust-deeds from him				4 25
" Examination into a tax-title				6 00
" Commissions	5 ℘ cent. on	$ 3,000,00	$150,00	$715 00
	2½ " " "	22,600,00	565,00	
				$ 836 25

for which they gave him a receipt (p. 47.)

The same account shows that Derby gave to them (S. H. Kerfoot & Co.) his check on Mechanics' National Bank for the first payment, $8,200;— which they "handed him." (Walker.)

In their answers they also say (p. 102,) that Derby, in the negotiations which resulted in the agreement of March 19th, 1867, stipulated for "the sum of $375, or thereabouts, *or an amount equal to one-half the commissions*, which said defendants ought to have received from the said John J. Walker, *for assisting him in making sale* of the said premises;"—to which they agreed: Derby, in his answers, says the same thing: and so does Kerfoot in his letter of February 29th, to Walker. (pp. 119, 120, and p. 77,)

Indeed, this letter, from beginning to end, is founded upon the idea that it was by the agency of Kerfoot & Co. that the sale was made;—and it was written to prove that Kerfoot acted with conspicuous zeal in that agency. And its ingenious statement of facts to that end, well known to Walker to be true, mingled with others, that he supposed to be so, (because he did not know them to be false,) such as the elaborate argument and statements to show that the sale by plaintiffs was a better one than that afterwards made by Pryor,—and the other plausible and artful suggestions and

explanations therein,—all arrayed with singular skill in the order of them, and felicity of expression,—had the effect intended.

But what if he had startled Walker, by saying or intimating in that letter that *it was not by the advice or agency* of S. H. Kerfoot & Co. that he had made the sale to Derby? This would have had a directly contrary effect to that of allaying suspicion. It would have defeated the whole purpose of this letter, and have aroused Walker like a thunder peal.

And what is to be understood if not "counsel, advice, and agency," for complainants, of Kerfoot's letter of March 19th, to Walker, before the latter left Chicago, expressly to be shown to the other complainants; in which, speaking of the sale "made by *us*," (p. 78,) he argues with so much casuistry in a few sentences,—and so much caution, too, to satisfy them of the advantage of such a sale? This letter is "Exhibit F," in the bill (pp. 78-9,) and in reply to interrogatory 16 (p. 56,) is admitted in the answer, "as stated, (p. 111,) [What purports to be a copy of the same letter, taken from Kerfoot's letter-book, is put into the record in another place; (pp. 133-4,) and there the expression, "*made by us*," is changed to "made by *you*;" which would be more in harmony with the denial of "counsel, advice, and agency."]

While this letter is before us, let us examine some of the testimony concerning it.

Kerfoot, being interrogated about certain papers, and a memorandum in relation to this letter, on the margin of his letter-book,—which memorandum (pp. 144, 133,) he for some reason, (prudential, perhaps,) asked Walker, in March, 1868, to write, and was called upon in March, 1870, to produce,—then, (p. 144,) says: "That letter * * (notwithstanding "it states it was proffered to Mr. Walker,) was written to "Mr. Walker at his special request,—*and Mr. Walker stood "at my side while I wrote it to him.*" This is a remarkable statement by one who claims to be honest, of two men who are supposed to be gentlemen,—that one should be looking (if it means so much,) over the shoulder of the other, while that other (the witness,) is writing a falsehood in a letter that is to have effect upon persons not present. Besides

that Walker's readiness to correct the misstatement when asked to do so in 1868, is evidence of his innocency of any impropriety,—his testimony on the subject (taken before Kerfoot's statement was made,) is both more credible in itself,—and is sustained by the internal evidence afforded by the letter. For this is addressed to him at the "*Sherman House*, Chicago," and the writer says in it, "I *send* it to you." Walker, in his deposition, says, (p. 141,): "from the "beginning to the end of the negotiations for the sale of the "property, I relied unreservedly on Kerfoot's judgment, and "often told him, during our interviews, (and on one occa- "sion *I remember distinctly when Derby was present*,) that, "being a stranger, and wholly ignorant of property values "in Chicago, I trusted entirely to his management, and that "I should require him, being my agent, to give me, before I "left, his written opinion, as a real estate broker, that the "sale was the best that could be made, and that I had got "the full market value of the property. He unhesitatingly "promised to do so; and being reminded of this promise *on* "*the morning* of the 19th of March, 1867, *he gave or sent to* "*me at my hotel, late in the afternoon of that day*, a letter of "that date. * * * * I remember that the letter *was* "*disappointing* to me at the time, because the expression of "his opinion was not near so strong and unequivocal as he "had led me to believe it would be. *I did not see him* after "the receipt of the letter. [Mr. Walker left Chicago that "evening.] but I was in no humor to find fault, or criticise "it, because I was then highly pleased with the result," &c. And, in relation to the memorandum, Mr. Walker says: (pp. 143-4,) "In the interview with Kerfoot at his office, in "March, 1868, after seeing that I was satisfied with his ex- "planation about the contract with Derby, he called my at- "tention to the fact that in his letter to me of the 19th of "March, * * * * he used the expression that it (the "letter) was 'proffered' by him. This, he said, was a mis- "take, as the letter had been given at my request, and not "on his voluntary offer, and asked me if I did not so recol- "lect it? I replied that I did so recollect it distinctly, be- "cause I had often told him, pending the negotiations, that "I should want him to give me a letter vindicating the sale,

"for the satisfaction of those whose interests I represented "as executor. He then asked me to be good enough to write "on the margin of the copy of his letter, in the letter-book, "that it was furnished at my request; which I did without "hesitation, as I had not asked *or expected* him to say in the "letter that it was proffered by him."

Again, if Walker had not acted with the "counsel, advice, and agency" of these men, how was it that he ventured two weeks after, (on the 4th of April, 1867,) to write to Kerfoot the letter (p. 145,) informing him what Pryor said about such a sale, adding, "I have, of course, no knowledge of the value of the property, *and trusted entirely to your judgment*," and calling upon him, as a person responsible, to explain?

And why was it that in his reply (p. 179,) of April 11th, to that letter, Mr. Kerfoot wrote: "I am *much indebted* for your frank letter of 4th April, inst?" And after telling what Pryor proves to be untrue,—said further: "Mr. Pryor "on examination *agrees with me*, that under the circum- "stances, that taking the swamp, the undivided interest, "the fact that ten acres lie west of State street, &c.,—under "all these circumstances, and the sale being to one person "in bulk, *you did well*." [NOTE.—That he does not say a word in this letter (written at the very time,) of having shown to Pryor the letter of Walker to him; nor does Pryor in his testimony anywhere say that he did.]

What then is to be thought of the denial in the answers, of agency in making the sale, when we compare it with this letter, and with that of March 19th, (given to Walker to be taken home and shown to the other plaintiffs,)—and to all the other evidence?—except that these defendants had, in their confusion, lost all self-possession, and determined blindly to swear the case through, or try to do so?

Falsus in uno, falsus in omnibus. One who so manifestly disregards his oath, on one point,—cannot be believed on another. No man's property is to be taken away,—no man is to be hindered from obtaining justice,—by the testimony or answers of such a person.

This is a well known principle of the law of evidence.

And it is applicable to answers in chancery, used as evidence,—as well as the testimony of mere witnesses.

"An answer which is shown to be false in one material part, must be discredited altogether, and is only regarded as a mere pleading"

Smith vs. Robertson, 28 Ala. R., p. 323:
Young vs. Hopkins, 6 Monroe, p. 23;
Geiger vs. Countz, 1 Call's R. 191;
Phares vs. Leachman, 20 Ala. R., p. 601;
Gunn vs. Brantley, 21 id. p. 646;
Jordan vs. Monroe, 5 Ho. of L'd's Rep, pp. 217, 218, 242; 11 Wend. R. 349, 354.

3.—That the land was sold to Derby for less than it was worth, and that Kerfoot had been offered more—are very distinctly proved.

Kerfoot writes to Walker, June 28th, 1866, that the land is worth $1,000 an acre,—and in his letter of August 31st, 1866, (p. 78,) that it is worth, *including streets*, $1,000 an acre, perhaps $1,200. And it is proved that from the spring of 1866, "there was a steady rise in the market value of "that property, * * until the spring of 1869—a steady "and rapid advance in the value of real estate; there "never was any decline in any of that property within that "two years, although there were *pauses*-occasional—pauses "in the advance." (*Pryor*, p. 178, Ans. 76,—[*pauses* are erroneously printed 'palsies;'] *Andrews*, p. 151, Ans. 24; *Averill*, p. 244, Ans. 10 to 22; *Lombard*, p. 250, Ans. 20 to 26; and Ans. 31 to 46 p. 251; *Wallace*, p. 266, Ans. 21 to 29, and p. 269; *Winston*, p. 270, Ans. 10, 11, and p. 271.) There is not (it is believed,) a particle of evidence to the contrary of this.

Pryor,—who owned a portion of the same parcel that was known as Pryor and Hopkins' subdivision,—testifies (pp. 162–3,) he was offered in New York $1,500 an acre, which he refused for his land, and was then told, "They will give you more than $1,500 if you will name some reasonable price beyond that;" which he refused to do. This offer was made March 5th, 1867, (p. 175, near bottom,) at the very time the negotiations between plaintiffs and Derby were going on, and for the whole of his part, (p. 163,) which, on an average,

was not superior, if equal, to the land sold by plaintiffs. (p. 168, Ans. 79,) Other offers of like amount for portions of this land were made to him. At this rate, the land sold by them to Derby, would be worth $46,884.

Lewis W. Stone, who shows *more exact knowledge of the several parcels* in controversy than any of the other witnesses, says: (p. 239,) "That land in block 1, block 6, and block 5, and all the *east* half block 4, I should think was worth $1,800 an acre. The west half of block 4, and undivided 20 acres of section 4, that west of State street, was worth about $1,000 an acre," the 1st of March, 1867. In that same month, he sold to a Mr. Gould over four acres of land, about one-half or three-fourths of a mile further south, for $1,000 an acre, cash. In 1866, (p. 240,) "I had a party who wanted to purchase 40 to 60 acres then, [there?] and went to Mr. Kerfoot to see what it could be got for. Mr. Kerfoot said he wrote to Mr. Pryor. I told him I had a party who would pay $1,200 an acre for that; that was in the south part of the tract, too, the south end of the Pryor tract, the poorest part of it." He had three interviews with Kerfoot about it.

Question.—When you speak of the Pryor tract, do you mean—

Answer.—I mean the 80 acres subdivision.

Q.—The whole subdivision?

A.—The whole subdivision. That was as much as a year before I made that sale * * * to Mr. Gould.

He [Kerfoot,] said he got letters from Mr. Pryor on the subject, but he never showed them to me. He said that Mr. Pryor wouldn't sell it, and so *I gave it up.* * *

☞ Q.—Did Kerfoot & Co., in March, 1867, let you know that the property was for sale, or any property in Pryor's subdivision?

A.—I never heard of it,—of there being any there for sale.

Q.—Were you here at the time?

A.—Yes, sir. [His place of business was 152 Madison street, Chicago.—p. 238.]

Q.—How long have you resided where you do now?

A.—Eight years.

Q.—How long have you been familiar with this subdivision—this Pryor and Hopkins' subdivision?

A.—Twelve or fourteen years.—(pp. 241-2.)

This witness has previously said that he was living in Hyde Park at "43d street and Michigan Avenue." (p. 238.) This was only across the street from the south end of the 80 acre tract, known as "Pryor & Hopkins' Subdivision," which was bounded south by 43d street, (see *Cleaver's* dep. p. 255, and *Pickett's*, p. 256,—who says the north end of block 12, in that tract, commences at 42d street,) The property in controversy is in the north half of that subdivision, and right west of it,—(a considerable portion of it being right next to the south line of the city,)—except two lots at the north end of block 12.—Then, according to the testimony of this witness, the 10 acres west of State street, and west half of block 4, together 13⅓ acres, were worth $13,333, and the rest $17 $\frac{923}{1000}$ acres at $1,800 an acre,—$32,261. Total, $45,594.

George B. Clarke, who also resided in Hyde Park, had been a real estate broker seventeen years, and familiar with "South-side Property," and with this for ten or fifteen years, (p. 147,) —says this was worth "Take the whole of them together, I should say $1,000 an acre.—*I offered that for it myself.*" This offer, he says, was made to Kerfoot in 1866,—and at the end of his deposition (p. 149.) "between May and December, 1866." It ought then to have been worth more than this in March, 1867. And he says (p. 149,) that he did not know the Hopkins property was for sale in March, 1867, and never heard of it. Ac. 31 $\frac{256}{1000}$ × $1,000 = $31,256.

Martin Andrews, a wealthy man, whose deposition (pp. 150, 159,) ought to be read entire, and compared with Kerfoot's letter of February 29th, 1868,—finding that his property, close by this in controversy, "had advanced at such a rapid rate," was eager to buy this also,—and several times, in the fall and winter of 1866, he endeavored through Kerfoot, to buy it, (p. 151 &c., (Ans. 25 to 34.)—He says: "I called in *frequently during the winter*, at Mr. Kerfoot's office. I don't recollect how often." Therefore, when Walker arrived late in February of that same winter to sell the land,—Kerfoot being absent at Springfield,—Mr. Pierson (p. 152,)

went to see Andrews and inform him of it, before Andrews was out of bed in the morning,—and in their conversations subsequently, "*Mr. Pierson intimated that they would advise* that not very far from a *thousand dollars* would be the price of the property." * * * "About this time Mr. Kerfoot returned from Springfield, and I received a telegram from Ohio, my former residence,—which required my presence there—Steubenville, Ohio,—on important business. I called in Mr. Kerfoot's office before I left—the morning of the day I left,—to ascertain whether they had yet been able to fix a price. * * I told them that I was going away to Ohio,—and I would *like to make some definite arrangement before I left.* Mr. Kerfoot said that, of course, they could not name the price until they had been down there (to the property.) But he asked me if I would make an offer? * * * I told him I would give him $1,000 an acre for the whole of it, with the exception of the 20 acres, the half of which I understood was an undivided half of the Hopkins' estate. I told him I *didn't like* to buy an undivided half of anybody's property, *if I could help it.*" &c. Then (p. 153,) after giving his address in Ohio, receiving a promise that he *should be informed by telegraph*, whether Walker would take $1,000 an acre,—and if not, "*the price at which Mr. Walker would sell the property*" to him,—and he had told them that he "expected to interest a cousin of his in the purchase,"—and they had "*reiterated the promise that whatever price should be fixed upon* the property, [he] should have the refusal." Andrews left for Steubenville, *taking with him a map of the property* which he had received from them. This was on the *evening of March 4th*, 1867; (p. 156, Ans. 55, & p. 158, Ans. 77.) "When I reached there, (p. 153, Ans. 29,) I showed this property, this plat in connection with a map of the city of Chicago, which Mr. Kerfoot gave me. * * Showed it to my cousin, who desired to join me in the purchase; explained to him its advantages, * * and my belief in the *rapid enhancement* that would soon take place in property. * * I told him I had made $1,000 as an offer. But Mr. Kerfoot very well understood, as a real estate dealer, when a man made an offer on property, and he offered $1,000; it was very well understood that he would go a little better

than that from his first offer—I mean where an offer comes from the purchaser, no price being fixed by the seller. * * We did conclude that as soon as Mr. Kerfoot's telegram arrived, if he declined the offer of $1,000 and named as a price $1,200, that we would take the property at $1,200 an acre." Becoming *impatient he telegraphed* to Kerfoot to know why they didn't hear from him. "Within *two hours* I received a telegram from Mr. Kerfoot, stating that the property was sold." On his return, Andrews went to see Kerfoot immediately, (pp 153-4,) and learning from him that the land was sold at $800 an acre, charged upon Kerfoot that he was interested in the purchase,—and had a quarrel with him. *Andrews* says (p. 155, Ans. 42,) the property east of State street was then worth $1,200 an acre, and (p. 157, Ans. 69,) that west $1,000. Ac. 10 × $1,000=$10,000.—Ac. $21\frac{256}{1000}$ × $1,200= $25,507.—Total—$35,507.

A. J. Averill, a real estate broker, to whom (p. 253,) Andrews mentioned his offer of $1,000 an acre, and who knew the land, and was at the time desirous to join Andrews in the purchase, says it was worth altogether $1,200 an acre; —and that he would have given that for it, and told Andrews so; that in this estimate he included the whole (p. 246, Ans. 41,); that he considered the property west of State street, worth $800 only per acre by itself; but "I made up my mind that as a speculation, I was willing to join him at $1,200 an acre." (p. 246, Ans. 43.) Ac. $31\frac{256}{1000}$ × $1,200=$37,507.

And *U. P. Smith*, a lawyer, (pp. 242-3,) who, in October, 1866, bought five acres, *cornering with* the east half of block 1, (part of the land in controversy,)—at $2,000 an acre, says that according to his best judgment, the land plaintiffs sold to Derby was, in March, 1867, worth from $1,200 to $1,500 per acre; say Ac. $31\frac{256}{1000}$ × $1,350=$42,195.

The average of these valuations for the whole is $39,824,-92, or $14,224 more than plaintiffs sold for.

Every one of these witnesses were well acquainted with that property at that time, and bought, or sold, or had property near it,—and had their attention drawn to it,—and some of them were desirous to buy it, and had made offers

to Kerfoot for it, or some of the same si
before or at that time,—and testify clearly
the value, at that time, and not a subseque

Of course, if a thousand citizens of Chicago should testify that they did not have a good opinion in March, 1869, of this land, and would not have paid $800 an acre for it,—this would not prove that it was not worth what buyers of such property estimated it at, and were willing to pay for it

How do defendants meet plaintiffs' proof of its value,—and Kerfoot's written mention nearly a year before, when prices were lower—of a higher value then than the price it was sold to Derby for subsequently? They examine six witnesses.

Henry E. Pickett, (the first,) was examined *Tuesday*, March 29th, (erroneously stated as the 20th, which was Sunday,) in 1870. He was examined evidently on the same day *Mr. Cleaver* was, the 29th, and and the latter was present, and heard Pickett testify, as Cleaver's answer in the middle of page 253 shows. Pickett is one of the defendants of this suit (p. 259), and was one of three purchasers of block 1 from Derby, in Sept., 1868, at $70,000; his part of which sum *he still owed to Derby*,—having only, as he says, paid interest on it (p 259, at bottom). He says, (p. 260,) "I have been somewhat acquainted with them [the lots and land in controversy,] since the latter part of 1865, or 1866. * * * I can't state when my earliest acquaintance began." On p. 256, to the question about the value in March, 1867, of the land in controversy—he says: "If a man wanted to sell right off in a hurry, I should say if he could get from $700 to $900 an acre, he was getting all it was worth at that time; that would be my understanding of it." Of course, he had heard that Derby gave the intermediate sum of $800 an acre, and that plaintiffs had sold *in a hurry*.

Mr. Cleaver, (p. 253,) being asked about the marketable value of *the whole*, answers: "Well, altogether, I should think it was worth about from—I should think from $700 to $900, as Mr. Pickett has stated. I think he got it about right, if there was any sale for it at all." This witness testifies (p. 254,) that in 1867, (he thinks it was,) he sold lands

in section 10, south of section 3, (which must have been a mile further off from the city,) for $600 and $625 an acre; of which he says (253, at bottom,) "I should judge that *anybody buying at that time* would give me *three times as much* as the lands over on State street, *or Wabash Avenue, or Michigan either*, would bring;" meaning (see questions,) the lands there in Pryor & Hopkins' Subdivision. As he has already said (p. 233,) that the *Michigan Avenue* property is worth *twice* as much as the Indiana, and at that time certainly *three times* as much as State street,"—and that the property in suit in all those places, and west of State street, was *worth altogether*, between $700 and $900 an acre—some estimate can be formed of the value of this witness' evidence. According to this, the property he sold for $600 and $625 an acre, must then have been worth about $4,000 an acre.

Mr. Joel D. Harvey, a real estate broker,—(p. 260,) is examined on the same day. He seems to have been interrogated chiefly about Mr. Pryor's affairs. He nowhere says what he thinks was the value of this land. He only says it was not so good, taken as a whole, as the land Pryor sold to Derby. But there is some matter in Mr. Harvey's deposition that must not be overlooked.

He is asked, (p. 261,) "Were they the same, or a portion of the same lands which *Mr. Pryor desired you to sell for him*?

A.—They were.

Q.—What were the best offers you were able to obtain for them?

A.—The best offer that I think I had, that I remember I had, was $1,200 an acre for that part lying north of the railroad.

On cross-examination, (p. 263,) this witness is asked:

Q.—Do you say that Mr. Pryor authorized you to sell this property?

A.—No, sir.

Q.—He did not authorize you to sell property?

A.—No, sir. * * * * He said he would sell some of it, if he could get satisfactory offers. That is what I was looking to get for him—offers from responsible parties. I

was interested to some extent in one or two of the offers that were made.

Q.—Were you interested on behalf of the purchasers in the offers?

A.—Yes, sir.

Q.—You were not acting in any way as the agent of Mr. Pryor in selling these?

A.—The same as I *would for any other man. I expected to get a commission if I sold it. I should have bought some myself if I could have got it at satisfactory figures.*

Q.—With which one of those persons you have named were you interested, Mr. Harvey?

A.—*Mr. Lombard and I* had bought and sold property together, and he was officing with me at the time. [Mr. Lombard was the person previously spoken of who was willing to pay $1,200 an acre; the offer of Lombard and Harvey to Harvey as agent of Pryor.]

A model agent to get high prices for the seller of land, is this Mr. Harvey, who negotiates for an interest with the purchaser. No wonder Mr. Pryor became distrustful.

Mr. Lombard, a lawyer, is examined (pp. 247–8,). In January, 1867, he bought some land in section 10, south of section 3, and one mile from the city boundary, lying between Wabash Avenue and State street, at about $400 an acre,—and was offering it about March, 1867, for $600 per acre in money, or $800 in trade, and didn't find a ready sale. He thought it more valuable than the Hopkins property west of State street, and very nearly equal to that east of it.

Mr. Lombard was one of those who was in the secret in 1866, of contemplated railroad improvements, shops, &c, further south from the city, to be made by the Rock Island Railroad Company (p. 249, Ans. 19 to 25,),—and he bought property down there in expectation that they would make it worth as much as that nearer to the city;—but he admits (p. 250, Ans. 22 to 25,) that in this he was mistaken.

Mr. Harvey also (p. 249,) was in that secret, and the agent of "The Rock Island people," Winston and Blodgett, and perhaps others (p. 250,) to buy lands further from the city at low prices, before the owners of them should hear of the proposed improvements. Mr. Lombard does not agree,

though, that a parcel of land that was swampy should be so much less valuable for that reason, (p. 251, Ans. 39, 44, and 45,); or that the situation of the land on one avenue or another, from Indiana to State street at that time, spring of 1867, when it was all "acre-property," sold by the acre, would make much difference in the value.

F. H. Winston, (a lawyer,) one of the "Rock Island people." *He knew in* 1866, about the intention to build the car shops, &c. Couldn't "tell when the outside public knew it. I didn't pay any attention to that part of it, you know. (p. 271,) * * * "When *we had got our interest* secured all around the present shops, it was then determined to build them there. I had other parties with me in the speculation."

This witness bought (Oct. 3d, 1867,) 34 acres in the *south part of the* 80 *acre tract that reaches up to* the Pryor & Hopkins' Subdivision, at $1,500 an acre. [This was about three-fourths of a mile further south.] Of this purchase he says: "As it has turned out, it was not so good;" [as the land in Pryor & Hopkins' Subdivision,] (pp. 271–2, qu. & ans. 12,) "that is, *as you get nearer the city*, the land is more valuable. But at that time, as I said before, I bought as much with reference to the location of the shops as anything else—more, * * and consequently *I thought it* would be more benefitted than the other." Exactly so: These men who were secretly and diligently working a mine which they considered very rich, (as it was,) and did not want "the outside public" to know anything about,—were not the persons to form a just comparative estimate of other property to which no such interesting secret was attached.

Wallace is the only other witness in regard to value. He had been (p. 264,) a partner of Derby's. He did not think well of outside property. "I viewed (he says,) that the better investment for my money was inside." (p. 265, ans. 14.) Derby (perhaps knowing this,) invited Wallace to join him in the purchase of the Hopkins property; which he declined. In conclusion, (p. 269,) he says that he remonstrated with Derby afterwards, about the *sales* he was making there. "It was leading a class of men into the purchase that I thought they never could get out of—and he would

eventually have to take it back. But instead of that to *show you how my judgment was at that time*,—it still continued to advance. The sales he was then making were barely nothing in comparison with the other property around it."

This is a review of all the evidence in regard to the value of the land. The views presented of that evidence in the opinion of the Judge below,—the Hon. H. W. Blodgett, excite astonishment. He says, (in his opinion,) that the six witnesses for the defendants, to whose testimony we have just referred,—are all persons—"well known to *the court*, and in whose safe, cautious business habits and judgments *the court* has much confidence." We must infer, then, that Judge Blodgett is the person of that name mentioned in the testimony, as the partner of Mr. Winston, and one of "the Rock Island people," for whom Mr. Harvey was agent to buy lands in 1866; and that a grateful recollection of his transactions with those associates, has prompted him thus to testify to their "safe, cautious business habits and judgments." It is respectfully submitted that the bench was not the proper place for the display of this partiality. The concern of "the court" in this cause was, or should have been, with the testimony and evidence given by others, instead of with its own. See into what errors this "much confidence" of Judge Blodgett has led "the court."

In the opinion, it is said: "The witnesses on the part of complainants, who testified as to the largest values, are Andrews and Pryor: and I must be allowed to say that I cannot but believe from their testimony that their judgment as to the value of this land in the fore part of March, 1867, is largely colored by subsequent transactions," &c. Now, there are *three* other witnesses, namely, Messrs. Stone, Averill, and Smith, who testified to higher values than Andrews did: And Pryor's evidence was of *offers* which had before that date been actually made to him,—the principal one on the 5th of March, 1867.—(p. 175, near bottom,)

It has turned out in this case, as it generally does, that men of "safe, cautious business habits and judgments," or whose thoughts are converged upon a particular field by special information peculiar to themselves,—are not in fact as good judges of the value of property outside of that

field, as men of freer views, in whom sound judgment is quickened by a spirit of enterprise.

Nor is Judge Blodgett less in error in assuming that Andrews made his purchase contingent upon another person's joining him in it. Although Andrews mentioned that he expected to interest a cousin in it, (which mention probably made Kerfoot resolve not to negotiate further with him,) yet he had already offered $1,000 an acre, positively, for the land east of State street, (p. 152, near bottom,) and this as *introductory* to a negotiation, (p. 158, qu. & ans. 72,) which *Kerfoot promised* should be continued by telegraph.

Andrews says (ans. 73,) "There can be no doubt about it, that whatever was fixed upon, that was to be telegraphed to me at the *address I had furnished;* and I was *there to telegraph back* whether I would accept or decline that offer. I was to have the refusal, too. * * * I was to have the refusal of it before it was offered to anybody else. That was the understanding. * * * I had it with Mr. Kerfoot.

Q.—Himself?

A.—Yes, sir; I did. * * * I had been talking about that property nearly six months. I had been running in and out of their office for six months, off and on. * * *And I wouldn't have left here without that understanding.* I supposed it would be honorably lived up to."

Note, that Andrews had made other large purchases through Kerfoot, or from him, and was a customer of his house. Nay; he had bought some property at "Kerfoot's special instance,—raised the money, and give him half the profits; that property I paid $29,000 for." (p. 156, ans. 54.)

Much stress is laid by defendants, and some by Judge Blodgett, on the sale made subsequently, April 19th, by the witness Pryor, of some of his adjoining land, to Derby. Pryor (who lived in New York,) got to Chicago the 8th or 9th of April, 1867,—when the excitement about a South-side Park was high, and an election in respect to it about to be had. [By the way, neither Walker in his testimony nor Kerfoot in his long and "exhaustive" letter, says that any mention of this park was made to Walker before his sale to Derby. The *defeat of it*, as occurring while Pryor was in Chicago, is mentioned in the letter. Nor was any mention

made of it in Kerfoot's letter of April 11th, 1867, (p. 79,) to Walker,—although the contest about it, in which Pryor, of whom he writes, was so zealous a partisan, was then at its height. Walker knew nothing of the effect of the agitation of the park question, on the prices of the property.] Pryor had come, sanguine that the park would be established, and in the belief, (not as Kerfoot falsely says,) that he would then "get *his* $1,500 an acre," but that it would greatly enhance the value of his property. He had been offered $1,500 an acre for it all; and Clark told him (p. 166, ans. 60,) that it was worth from $1,500 to $2,000 an acre,—and that if the park should be adopted, it would be "worth the next day $4,000 an acre." Moreover, Kerfoot was pressing him with an offer of $1,500 an acre the day before the Park vote was taken, (p 163, ans. 47,) for some of the land, (doubtless for Derby,) and said to him "the party who makes the offer, says he will not pay it after to-day, if the Park be defeated." But Pryor was determined not to sell it at that price, or at all, until the Park question was settled.

It is clear that many owners of South-side property, and others, in the excitement of the moment, thought that its value depended very much on the Park vote; and Mr. Pryor, who, with all his excellent sense, was (as Mr. Kerfoot told Mr. Clarke, p. 149,) "a very nervous man," subject to exaltation in his views and feelings, and therefore to depression, —was much impressed with the same idea. When, therefore, the park was defeated, Mr. Pryor was, he says, (p. 186,) "a good deal depressed, * * * felt it very sensibly, at least—to tell the truth, was a good deal disgusted, and for a little while, was very much annoyed and disconcerted." In this condition he was beset by Derby, with the aid of Kerfoot, (pp. 164-5, ans. 57, 58, pp. 165, 176, 199, 201,) and persuaded that it was best for himself and other property-holders in the same locality, to sell some of his land to Derby, in order that the latter might thus be induced to put up contemplated improvements, &c. And Mr Lancaster, to whose house Mr. McLean belonged, through whom $1,500 an acre had been offered, having, the morning or day after the Park vote met him, and told him (pp. 187, 198,) "his men didn't care to make an offer,"—Mr. Pryor sold his

land April 19th, 1867, in blocks 1, 2, & 6, and one acre in the south-east corner of block 3, (see map, p. 71,) to Derby, as he (Pryor,) understood, (p. 199,) "at about $1,400 an acre," —more exactly, $1,395; that is at $595 an acre more than Derby paid plaintiffs for their adjoining lands,—and this directly after the defeat of the park, on the 16th of April; the immediate effect of which was to depress prices and prevent sales. "All the negotiations and conversations, everything relating to the sale was commenced, prosecuted and ended in the office of S. H. Kerfoot & Co." (p. 176,) "They commenced on the 17th of April, and terminated on the 19th, in the agreement to sell." And Kerfoot "suggested nobody else's name," except Derby's, who would be likely to buy.

Now, suppressing all these and other like circumstances, —none of which were known to Walker,—Kerfoot sets himself to work with great ingenuity and pains in his letter of February 29th, 1868, to enhance the *price* (Walker) got from Derby to $875 an acre,—and depress that for which Pryor sold, to $1,200 an acre,—and thereupon, by exaggerating the superiority of the Pryor lands, to persuade Walker that he has made as good a trade as Pryor did.

Kerfoot & Co., wrote to Pryor, March 20th, 1867, (the day after Walker left in the evening for Mobile,)—and informed him that Walker had sold at $800 an acre—(p. 208,). Kerfoot told Andrews the same—(p. 154.). The land was estimated at 32 acres, which, at that price per acre, would make $25,600, the amount Walker was to receive. But the exact quantity,—including the streets, (which all the witnesses who say anything about it, say was always done,—when sales were made by the acre,) was not 31 acres, as Kerfoot says, (p. 76.) but $31\frac{256}{1000}$ acres, as he shows in his letter of August, 1866, (p, 78,): which makes the price a fraction less than $812 65 per acre.

But to make it seem larger, Kerfoot deducts (p. 76,) from 31 acres $1\frac{563}{1000}$ on account of the railroad track,—although this runs only along the *street* which has already been dedicated to public use. And to make the price per acre of Pryor's sale *smaller*, (p. 75,) he makes no deduction of quantity from his land, although the railroad runs along the whole of

it also; and he doubtless received compensation therefor. (See page 203–4.) Next, Kerfoot says, Pryor took in part payment "inside property" at $170 a foot, amounting to $8,500, which was worth, and they several months after sold at only $135 a foot; (this sale was made Sept. 23d, 1867, p. 173,); whereby there was a loss of $1,750: and then he debits Pryor with large sums as special assessments, —and loss of interest at 8 per cent. on $8,500 for six months, though the inside property was sold in September, 5 months after the purchase.—And so he reduces the price for which *Pryor sold*, to $1,200 an acre. But Kerfoot passes over his and Derby's misrepresentations. He suppresses the important facts that Derby told Pryor this inside property *was worth* $170 *a foot, and he had been offered* that for it,—and that he (Kerfoot,) Pryor's agent, told Pryor that "it was *then worth* $160, and that he thought they *could readily sell it* for that," (pp. 173 & 221–2,) which would have been at a loss of only $500 instead of $1,750. And he omits also to say that this property was put into the hands of S. H. Kerfoot & Co. "to re-sell it immediately,"—as he had said they could; in which case there would have been none of those large charges for special assessments, and loss of interest. While therefore, it is true that, in consequence of the misrepresentations of these defendants, Pryor realized little more than $1,200 an acre,—he nevertheless sold it for about $1,400,—and this under influences artfully intensified by his own agents.

Now, why was all this ingenuity exercised in under-stating, over-stating, suppressing, and perverting the truth in these remarkable calculations, and yet more remarkable letter? Are they not the subterfuges and falsehoods of a man conscious of guilt?

I will not pause to expose the exaggeration in regard to the superior value of the land Pryor sold. All of the 20 acres west of State street, and north of the railroad track, was dry land, and right next to the city boundary: so was the east half of block 1. The rest of the Hopkins property was in the next tier of blocks on the *first* street south of the city boundary: And all—east of the west half

of block 4, was dry land. The best streets and avenues of the city, running southward, would pass through it. But these streets and avenues were not yet open. They were obstructed by a trotting race-course above in the city. Whether Michigan or Indiana Avenue, or some other would be the most desirable, could not then have been determined. What the witnesses say of this must have been predicated in a great degree on what was afterwards developed. As late as March, 1868, *Kerfoot* speaks of the property on Indiana Avenue as being the most valuable (p. 76,). *Lombard*, speaking of the whole, from Indiana Avenue to State street, (p. 251, ans. 36 to 44,) says: "I don't think there was a great deal of difference *at that time* (March, 1867,). It was all held as *acre-property*."

4. Defendants Kerfoot & Pierson deny that they entered into any secret and corrupt agreement to buy the property with Derby, or in his name for their joint benefit. How is this to be proved upon them? In *Williamson vs. Gould* (21 Maine R. p. 276,) *Whitman C. J.*, says: "It is not often the case that any but the participators in fraud are cognizant of it, and the *perpetrators of it will deny it.* If fraud therefore could not be established by *circumstantial evidence*, even in opposition to the denial of the defendant in equity under oath, the remedy under a process in equity would be, in almost every case, illusory."—What is the circumstantial evidence in this case?

1st. The land was sold for less than its value.

2d. No notice was given by advertisement, as Walker testifies (p. 138,) he requested should be done,—or otherwise, by which buyers could be induced to negotiate for it. *Clarke*, who had several months before offered $1,000 an acre for the whole of the land, and was a real estate agent, and in the city at the time; did not know that it was for sale (pp. 148 & 149,). And *Stone* who had offered to Kerfoot (p. 240.) during the year before, $1,200 an acre for the land in the south end, and poorest part of the subdivision,—and had two or three, (he thought three) interviews with Kerfoot about it, (p. 241,) and asked him to correspond with Pryor on the subject,—never heard of the Hopkins land being for

sale in March, 1867; although he was there at the time, and a real estate agent in the city. In fact, it is not pretended that, except Derby and Andrews, a single other land-buyer or real estate dealer in Chicago knew from Kerfoot & Co. that the property was for sale.

3d. Though Pierson had several conversations with Andrews about the purchase, before the return of Kerfoot from Springfield,—he never at any time introduced him to Walker, or informed Walker that he had found a person who was desirous to buy. Neither did Kerfoot;—or if he spoke of him at all, it was "in such a way as to make no impression." This reticence towards their principal, indicates that it was their policy to keep absolute control over the negotiations for a sale.

4th. *Andrews*, a rich man, and real estate dealer who, in the course of that year, bought $225,000 worth of property, (p. 157,) was at the outset the person selected by Walker's agents as the person to buy. In their first interview, after Walker's arrival—Pierson tells Andrews that "the owner of "the property, the party who had it for sale, had come *all* "*the way from Mobile*, and was here to *sell the property*;—"and as I [Andrews,] had been talking about it for so long "a time, * * they gave me the *first opportunity of pur-*"*chasing.* * * Some days elapsed. * * We had a *good* "*many conversations* backward and forward, Mr. Pierson and "myself, *about what* the property was worth, and what the "probabilities were of the price that would be fixed upon it. "Mr. Pierson intimated that *they would advise* not far from "a thousand dollars." But nothing could be done until Walker should go down to look at the land. And when Kerfoot returned, he said the same; but he invited an offer; and Andrews made an offer of $1,000 an acre.—Now, during all this time, not a word is said of Derby. Andrews was the selected buyer to whom the agents gave the first opportunity of purchasing. But, notwithstanding these frequent interviews and suggestive conversations, he doesn't "propose." Nay, he says he expects to interest a *cousin* in the purchase. And albeit, he gets their promise to continue the negotiation by telegraph, (so as to avoid delay,) and that he shall have the refusal at *any price* that may be fixed,—and

shows very great eagerness to get the land,—and is a valuable customer of their house,—(p. 156,)—Andrews is "in disgrace,"—and Derby suddenly becomes the only proper man in Chicago.

It is with amazement, we may mention here, that we read the following in Judge Blodgett's opinion (p. 19,): "Andrews, while he says he would have purchased that portion which lies east of State street, for $1,000 an acre, and perhaps *would have gone higher, at the same time admits that his ability to purchase, and the question whether he could have purchased at all, depended upon whether he should succeed in enlisting a cousin or relative of his in Ohio, in the venture with himself.*" In all the testimony of Mr. Andrews, there is not a syllable of such an admission, or anything suggesting such an idea. On the contrary, he bought some property, and gave $18,000 for it, after he left their office, March 4th, on the occasion when they promised to telegraph to him as before mentioned (p. 156, ans. 54, & 55,). And he declined to admit Averill into a partnership with him in the purchase he was desirous to make of the property in controversy. (p. 243,).—Even Kerfoot in his glozing letter, full of misrepresentations to Walker, does not say that Andrews was unable to make the purchase without assistance: And when taxed by Andrews with breach of faith toward him, his only excuse, as Andrews says, (p. 154,) was this: "That Mr. Walker was desirous of selling the whole that he had together, and that as he thought I didn't want the undivided half from what I had said, ten acres, therefore, he did not see fit to telegraph me. * * * * * I told him I didn't say unequivocally that I would not buy the undivided half on any terms, but simply that I didn't wish to purchase it if he would sell the other, * * at $1,000 an acre. * * "I asked him how he could decide his duty to Mr. Walker by selling that property for $800 an acre, when he had my offer of $1,000 an acre? * * His reply to me was (*the only reply in all the conversations I could get,*) was what I have before stated; which I considered an *evasion and subterfuge.* I so told him. * * I charged him in some way or other having some kind of an interest in the property." &c.

4th. Why was it that Kerfoot at the time, and always af-

terwards, lay such great stress upon the sale of all the property "*in bulk*," and that to one person? This is the burden of his letter of March 19th, 1867, (p. 133.) to be shown to Walker's co-plaintiffs: So it was of his reply of April 11th, 1867, (p. 79,) to Walker's letter, informing him of Pryor's surprise at the sale: so it was (according to that reply) of the conversations with which he bored Pryor concerning the sale; (about which see also Pryor's testimony, p. 166, ans. 61-2-3; pp. 166-7, & p. 207, "Exhibit C:") so it was of their letter to Pryor, of March 20th, 1867, (p. 208,) the day after Walker left for Mobile: so it was in his letter of February 29th, 1868, to Walker (pp. 73, 76,). And it was his *sole excuse*, as we have seen, to Andrews, for the breach of promise to him.

Now, the first "introductory" offer made by Andrews, was of $1,000 an acre for the 21 $\frac{256}{1000}$ acres east of State street, amounting to $21,256 for that part alone: and at $1,200 an acre, which he would have paid, and Averill desired to join him in paying, this part would have amounted to $25,507 20; that is, within less than $100 of the price Derby paid for all: and it is obvious that Andrews would have paid $10,000, if not more, in cash (p. 157, ans. 66, 69,). Why then was a sale "*in bulk*" "*to one person*," so important, that Kerfoot & Co. could not afford to *telegraph* as they had promised, and "reiterated" to Andrews that they would, about the sale of a part at a higher price? The interests of plaintiffs required that it should not all be sold "in bulk"—when prices were going up,—especially if that particular time was unpropitious, as Kerfoot said. But if Kerfoot & Co. were joint purchasers with Derby, at $800 an acre, then were they very much interested that the sale should be made *in bulk*, and not of that part only for which Andrews had offered a higher price,—that the grossness of their misconduct might not be so glaring and wholly without a pretext for an excuse.

5th. As if to prepare Walker to be victimized, Kerfoot, under the guise of a zealous interest in his behalf, at the same time that he told him "that he knew but one man in the city whom he thought would be likely to buy the property," (p. 139,)—"prepared [Walker] for the man" (p. 73,); that is, he described Derby to be (as he was,) "a shrewd

and exacting trader"—(p: 139,)—a man difficult to deal with.—He told Walker also, "that outside property was dull, cash customers were scarce," (p. 73,) that it "was dull, not in demand, and there had been no movement in it since August, 1866," (Walker, p. 138): which statement the testimony of most of the witnesses, in respect to several sales and offers about that time, shows to be untrue.—Why was it that Kerfoot (as he says,) prepared Walker for the man, and *thus* prepared him? Why did he not encounter the man himself? Did he also *prepare the man for Walker*? No one remembering that Walker was striving to sell this property at Chicago, for the purpose of protecting for the large family of his deceased father-in-law, the property in Mobile, on which they depended,—can read his account, (on p. 139,) or Kerfoot's (on pp. 73-4,) of the capricious dealing of Derby,—and the anxieties and mortifications to which it subjected Walker,—and of his going time and again from Derby to Kerfoot for counsel and relief,—and observe how he was driven like a shuttlecock between the offices of the two,—they having at intervals intercourse also between themselves,—without feeling indignant towards both,—as we hope Kerfoot himself sometimes really did towards Derby,—at the perplexities and indignity that Mr. Walker was subjected to.

Kerfoot in his letter, and defendants in their answers, make a merit of Kerfoot's having advised Walker not to sell at that time,—because it was not a good time. It is the trick of a confidence man, the better to delude his intended victim.

Walker had already told him that he must sell, unless he could raise $10,000 in cash by borrowing it upon a mortgage of the land.—That you cannot do, he says: you can raise money on it only by a sale. Then, says Walker, I must sell. What is the use of telling him not to do so,—that this is a bad time,—to wait at least "till the grass is green?"—and of what use is it to take him down in inclement weather, to look at the property in its dreariest aspects,—in "ice, snow and slush,"—except to depress his hopes and make him an easy victim to the *only purchaser* in Chicago?

It is obvious now that Derby all the time knew the exigencies of Walker's situation—and that Walker "looked to him as the only possible purchaser." By means of this knowledge he had forced the price down in the first instance, to $800 an acre, less than one-third cash,—and was now trying to extort from Walker a yet better bargain; to which Kerfoot, after what had passed between him and Andrews, dared not consent.

Judge Blodgett says it is not proved that Andrews would have paid for the property any more than Derby did, "when he found himself *brought in contact* with Walker, or "*became possessed of the information* that *Walker was under* "*the necessity of selling*, or was determined to sell at *some* "*price or other*." Why was Walker, who had just passed from the warm atmosphere of Mobile into the rigors of a Chicago winter,—where, as Kerfoot says, (p. 73,) he "staid in the hotel very closely," and where he did not, on his arrival, know a soul, except Kerfoot,—who treated him with marked cordiality, and entertained him at his house, "professing, as a southern man, perfect community of sentiment," (p 143,)—why was Walker, under these circumstances, forced into such "contact" at all, with Derby?—and how came Derby, and why should Andrews become, as Judge Blodgett says, "possessed of the information that Walker was under the necessity of selling?" No one pretends that Walker told this to Derby. All that Derby himself says, (p. 115,) in his answer, is—that Walker told him that he had come to Chicago "for the express purpose of selling the premises,"—that is, in slang phrase, that he "meant business." He said no more than this to anybody but his trusted agents.

Observe further, that although Derby is informed (p. 115,) that he must purchase for cash,—and upon that information goes out to look at the land, in order that he may make a cash offer, and will not buy for cash except he shall get a good bargain,—yet he comes back and offers only $800 per acre, *one-fourth* in cash, the rest in one, two, and three years. How came he informed that Walker would not require all in cash? Notice that W. got from the Railroad Company $1,-450 40,—which, added to the $8,200, made $9,650 40, very

near $10,000. (See Kerfoot's letter p. 76.) Have we not a right to infer that Kerfoot, to whom a price, all cash, might be very inconvenient, engineered so as that Walker should take less than one-third cash of the price at $800 per acre, knowing that about $10,000 was all he required in money?

5th. It is obvious that Kerfoot well knew that Derby's intimations of a desire "to back out of the trade," which so alarmed Walker, were all a mere *sham*. For Kerfoot finally, according to his own account,—puts an end to all artifices, and drives Derby into the arrangement that was then made,—by the threat, (what a threat to a person supposed to be desirous not to take the property?) that he, Kerfoot, "will break up the trade, and he shall not have the property at all." (Kerfoot's letter, p. 74, at top; Walker, p. 139, near bottom,)—This threat, it seems, was made at a private interview between those two; and immediately after it (pp. 139–40,) came the exaction of the quit-claim deed,—perhaps one of the secretly designed results of all this affected vacillation. If Walker should leave Chicago, believing,—as he says he did,—that he had made a good sale, and fearing that the buyer might use any pretext to withdraw from it,—the effect on him would be to hasten the execution and delivery of the quit-claim deed, which Kerfoot, a conveyancer and real estate lawyer, and Derby, who was advised, well knew was necessary to perfect the title. See the advantage which, in this respect, they had,—with Walker under the impression that his deed as executor conveyed the whole title,—and yet knowing that until he produced the quit-claim deed, he could not get the notes, by which alone he could now raise the money that he needed.

6th. Kerfoot and Pierson, a few months afterwards set up a claim to one-half of this property, and Derby disputing it, they produce and put upon record an agreement between them and him, dated on the very day of the delivery by Walker of his deed as executor,—and of the deposit of Derby's notes for the credit part of the price *in escrow* with S. H. Kerfoot & Co.,—according to which agreement, they are to have half of the land for one-half of the price Derby was to pay for it to Walker.

7th. If there was not fraud in the transaction, *why was it*

kept concealed from Walker? He wrote a letter of the 4th of April, 1867, to Kerfoot, which the latter replied to on the 11th, about Pryor's opinion that the property had been sacrificed. To a man conscious of integrity, writing only three weeks after, March 19th, when it was in his power to prove any-thing that was true,—what more natural than then to have said,—so far from your contract of sale being a bad one,—the purchaser became discontented—and has actually sold one-half to us at the same price he agreed to pay you?

And why was it that when Walker was in Chicago the last of May and first of June, to deliver plaintiff's quit-claim deed,—seeing Kerfoot and Derby and Pierson daily—and talking with them familiarly about this property,—not one of them let their secret escape him? It never came out until the quarrel about it among themselves,—and then on the 31st of August (the day before 1st of September,) it was for self-protection against Derby, put by Kerfoot and Pierson on the records in Chicago.

And why was it that no allusion to this contract was ever made by Kerfoot, or Pierson, or Derby, to Walker's friend, Mr. Pryor? whose land, (a part of the same tract as the Hopkins land, and formerly owned by Hopkins and Pryor in partnership,) they immediately set about getting Pryor to sell to Derby with remarkable tact and persistency. And why was it when Pryor heard of the agreement, in July, 1868, and spoke of it then to Derby,—that the latter falsely denied that he had *ever signed or sanctioned* it,—and charged that Pierson (the least guilty of the three,) had concocted it for the purpose of blackmailing Derby? (See Pryor's dep. pp. 180, 181.)

5. The charge of confederacy and collusion between Derby and Kerfoot and Pierson, and of a common interest during the whole transaction, and from the beginning of it, which we have been discussing, is, of course, the main charge in this cause. It is also a charge independent of and preceding the averments in regard to the written agreement. This last is only *a part of the evidence* subsequently produced for use between themselves of the antecedent confederacy alleged by plaintiffs, and through which the sale from plaintiffs to Derby was effected. And so is the charge

in the bill. That charge is that they "to *express* the understanding and agreement by them *secretly*, corruptly, and covertly made *as aforesaid,—under date of March 19th*, 1867, made, executed, and interchangably delivered," that written contract or agreement. Nothing is charged as to *the time when* it was made. It is averred as an existing thing with a date to it as a part of it,—as an agreement "under date of March 19th, 1867." Defendants all admit the making of that instrument—but they say it was made under peculiar circumstances, which they relate;—and that the date is not the true date,—that the instrument was made at a subsequent time, for a reason which they set forth: And they insist that this new matter which they set up in an answer that is not in these particulars, responsive to any allegation of the bill, shall be accepted as true without any proof, and that they be excused from appearing themselves or introducing others as witnesses to undergo cross-examination. They might just as well set up that anything else in the agreement was untrue in fact, and require their statement in the pleading, to be accepted as true without proof. We submit that this cannot be allowed.

McCoy vs. Rhodes, 11 How. R. pp. 140, 141;
Hart vs. TenEyck, 2 Johns. Ch. R. p. 89.

In respect to this written agreement, and the person by whom it was written, there are some remarkable contradictions and averments. Derby says in his first answer, (p. 39,) when the suit was against him alone:—"This defendant says and states the facts to be in regard to the making of said agreement between this defendant and said S. H. Kerfoot and J. Ford Pierson, that *some considerable time subsequently* to the 19th day of March, A. D. 1867, and after this defendant had purchased and paid for said real estate as aforesaid, and during and before the time when said John J. Walker delivered his said quit-claim deed, executed by said other complainants to the defendant, he, this defendant, in the interim between the date of said purchase and the time aforesaid, having offered the said real estate for sale through divers persons, and in divers ways, at the rate of one thousand dollars per acre, and being unable to effect a sale there-

of at the price, stated to the said Samuel H. Kerfoot, that they, the said S. H. Kerfoot & Co., were instrumental in his purchasing the said real estate, and that the same was not then worth the price which this defendant had paid therefor, and that this defendant had been endeavoring to make a sale thereof at the rate of $1,000 per acre upon credit, and was unable to make a sale thereof at that price and upon those terms, whereupon the said Kerfoot stated to this defendant, that they, the said S. H. Kerfoot & Co., would purchase one-half of the said premises at the rate and upon the terms that this defendant purchased the same from said John J. Walker, and this defendant then verily believing, that he had paid the full and extreme value of said premises to said John J. Walker, and also believing that the said premises were not then worth more than this defendant had so paid therefor, this defendant then stated and told the said S. H. Kerfoot, that he, this defendant, would sell the said S. H. Kerfoot & Co. an undivided one-half interest in said real estate, at the price and on the terms which this defendant had purchased the same of said John J. Walker, provided the said S. H. Kerfoot & Co. would, in addition thereto, pay this defendant the sum of $375, or an amount equal to one-half the commissions which the said S. H. Kerfoot & Co. ought to have received from the said John J. Walker, for assisting him in making the sale of said premises, which, to do the said S. H. Kerfoot then and there agreed, and thereupon the said *Samuel H. Kerfoot, in his own proper hand-writing*, prepared the original of said agreement in the said bill of complaint, set out, and antedated the same March 19th, 1867, with a view to entitle this defendant to interest on the deferred payments, equal to the amount of interest which this defendant had to pay thereon to said John J. Walker."

This answer was made first, as mentioned before, to the bill against Derby alone. In that, no allusion was made to Kerfoot & Pierson's bill for a specific performance against Derby: and it was not known to defendants that a copy of this latter bill was in the power of plaintiffs.

Of course, Derby did not file his answer from which the quotation above was taken, without a consultation first had

with Kerfoot, whose reputation as well as fortune was so largely staked upon the issue of this cause. And Kerfoot, on being consulted, could not fail to remember the account he had given in his long and elegantly and artfully written letter of February 29th, 1868, to Walker, of the making of that conspicuously important agreement between him and Pierson on one side, and Derby on the other, dated March 19th, 1867. The account of it in that letter is this:

"A few days after you left, Derby came into our office, and [whether serious or not, I do not know,] began complaining of the trade we had led him into. 'The land was half a damned slough,' &c. We asked him if he would sell us half at the price he paid. He said he would if we would give him half of the commissions we had received. We said we would, and we at once drew up a rough memorandum which he could not refuse to sign. We had time in which to make the cash payment till September 1st. We do not think he dreamed we would take him up; but we did."

This account was given near the close of that long epistle, and was introduced (as if the agreement was one of the least important matters in the letter,) as follows: "And now, as I desire this document to be exhaustive of this subject, and conclusive upon it, and one to be filed away and preserved by you for your future reference and justification if necessary, I will give you what doubtless has been misconstrued or misused by some one maliciously disposed," &c., and "who thus stabs us behind the back."

Mr. Kerfoot, having thus in a letter in plaintiff's possession,—represented the crafty and self-willed man, "the inevitable Derby," (as he previously calls him,) as suprised and caught by the *prompt writing by himself* [Kerfoot,] of the agreement under consideration, and not knowing that plaintiffs had another document of his,—showing that the letter was not "exhaustive of this subject and conclusive upon it"—thought, doubtless, that Mr. Derby would have to "fight it out on this line." At least Kerfoot could not assist him on any other.

Accordingly, we see Derby, when, (if the answer of Kerfoot and Pierson is to be relied on,) that original agreement was probably in his possession,—under oath answering,

that "the original of said agreement in the said Bill of Complaint set out," was written by "Samuel H. Kerfoot *in his own proper handwriting.*" (The Bill contained a copy taken from the public records.)

But Derby is not satisfied with that. He goes into details and says further, that he tried hard to sell the land "through *divers persons* and in divers ways at $1,000 per acre. This, of course, could not be done in "*a few days,*" (as Mr. Kerfoot has it.) So Mr. Derby says it was *some considerable time* after the 19th day of March, in the year of our Lord, 1867;" and the agreement was "antedated the same March 19th, 1867, with a view to entitle this defendant to interest on the deferred payments," &c., from that day.

Would it not, if that was indeed the purpose,—have been quite as easy and more natural and in place, to have added the words, *from March 19th*, 1867,—after the words "*six per cent. per annum*," where they occur in the body of the agreement,—and to have given *a true* instead of a *false date* to the instrument?

After this, however, comes the amended bill by which Kerfoot and Pierson and others are made parties defendant with Derby. And with this amended bill, is brought in as "exhibit A" to it, the well drawn and carefully written bill of Kerfoot and Pierson against Derby, for a specific performance; which bill they in their answers to interrogatories admit that they caused to be prepared,—and that it was not filed "for the reason that prior thereto, and on or about the "fifth day of September, 1868, an adjustment of the matter "was had between these defendants and said Derby as here-"in set forth."—(p. 104.)

It is true they say also, "these defendants caused a bill of complaint to be prepared, which bill was prepared as set forth 'exhibit A,' and submitted to these defendants by their solicitors for the purpose of *reading, revising and correcting*, but the same never was revised or corrected, for the reason that said Derby adjusted and settled with these defendants prior to such revision as hereinbefore set forth."

And again, to interrogatory 8, they answer: "Such bill of complaint as prepared and submitted to these defendants

for *revision and correction*, was substantially of the *form, tenor, and effect* as set forth in exhibit A."

Yet, although six different times they speak in their answer of this bill of theirs,—they do not once say there was a single error in it to be corrected.

This bill is treated by Judge Blodgett as if of no importance, because not signed by Kerfoot and Pierson or filed. But we are investigating an alleged case of fraud. It is pertinent to inquire what other accounts those concerned have given of the matter. Here is an important legal paper giving an account of the transaction which plaintiffs in it both admit they caused to be prepared. Kerfoot himself, no doubt, as the person who had transacted the business, instructed the solicitor in regard to the facts. (Kerfoot was in Chicago at the time, and not in Europe, as Judge B. says. He was not in Europe at all in 1868,). Of course, the solicitor did not invent or imagine the facts charged. If he did, they (not we,) could have introduced him to prove it, or have introduced themselves, to prove that and the other new matter—that they had not revised the bill. It is evidently a perfected bill. Numerous exhibits are attached to it, which is only the case—as every lawyer knows, with a bill that is to be filed as approved, and complete.

This bill was prepared about the 1st of September, 1868. (p. 104.)

Kerfoot's admirable letter of February 29th, had long before re-assured Mr. Walker that his friend, the writer of it, was worthy of the high esteem he had conceived of him. (See deposition of Walker (p. 143,) and his letter of February 24th, 1868.—p. 70).

Walker, in his distant home in Mobile,—was therefore not thought of, only Derby was,— when Kerfoot and Pierson made their statement of facts to their solicitor, for their bill against Derby. The bill is founded on the agreement of March 19th, 1867; what does it say of that agreement?

(p. 61). "The said agreement *was made verbally*, but on or about the 19th day of March, 1867, *said Derby undertook to reduce the same to writing*, and the writing thereupon *drawn by him*, was executed by said Derby and your orators, and is

as follows: (Three contradictions of the statements made in the answer.)

Then follows an exact copy of the agreement before set forth, made by the *Solicitor of Kerfoot & Co.*, who, with the original before him, described it as in *Derby's* handwriting,

The bill then proceeds as follows:

"Your orators, when said memorandum was *presented to them by said Derby*, *objected* to the mention therein of $375, on the ground that said sum was not to be paid; but said Derby then and there in consideration of certain services which had before then been rendered by your orators for said Derby, waived the payment of said sum allowing it to stand as being receipted for in said memorandum," &c.

This account, remember, was given in the bill of the parties on one side of an agreement, (which we say was a corrupt one,) against the party on the other, for a specific performance of it. And the bill was prepared to be earnestly pressed, for Derby was then selling the property in disregard of K. & Co.'s claims,—at an enormous profit, to Wing, Rawson, and perhaps others.

As the allegations, that the agreement was originally in parol "made verbally,"—(the bill says the 16th of March,) and that "on or about the 19th of March, 1867, said *Derby* "undertook to reduce the same to writing, and the writing thereupon *drawn by him* was executed," and was the one then copied into the bill,—were of matters equally well known to all of the parties personally, to this contract, there was not only no inducement to misstate them in the bill,—but the most obvious reasons for alleging them correctly. At the same time it concerned *both parties* in the highest degree, that it should not appear by the bill, that Kerfoot & Co. were the agents of Walker, et al., for the sale of the land, and that the agreement was made during their agency; for this would have been not only fatal to the bill, —but subversive of the titles and claims, both of Kerfoot & Co., and of Derby, to the property. So, nothing is said of such agency.

It is obvious, therefore, that this matter, brought into this cause by the amended bill, must have been felt to be of great importance by defendants, Derby, Kerfoot, and Pier-

son: How, therefore, do they meet the allegations founded on it, particularly as to the writing of the agreement?

Derby, having already sworn in his first answer in the cause, to the averments hereinbefore copied, repeats them as true,—in the body of his answer to the amended bill. (p. 119,) But when he comes to answer the special interrogatory on the subject, (int. 9, p. 56,) in which he is required also to produce the agreement for inspection,—he answers as follows:

"It is not true that the original agreement was reduced to writing by this defendant instead of the defendant Kerfoot; on the contrary, thereof * * * * the original of said agreement was prepared by said Kerfoot and *then and there amended in the handwriting of this defendant*, as this defendant now remembers. This defendant is *unable to produce the original of said agreement.* And further this defendant answering says, that he believes that the words "I" and "me" refer to this defendant, and the word "*Pearson*" refers to the defendant, J. F. Pierson."—(p. 126. See int. 9, p 56.)

Kerfoot and Pierson in the body of *their* answers, do not (p. 102,) say who wrote the agreement; but they can not avoid an answer to the special interrogatory; and here it is:

"And these defendants answering further, the said Sam'l H. Kerfoot, of his own knowledge, and said J. Ford Pierson, on his information and belief, say, that it is not true that the original agreement, (*which agreement these defendants upon settlement delivered to defendant Derby,*) was reduced to writing by defendant Derby, instead of defendant Kerfoot; but these defendants do say that said Kerfoot prepared hastily and roughly the original paper, which was then amended and re-written by said Derby. But these defendants do say the words "I," "me," therein, refer to defendant Derby, and that the word "*Pearson*" therein does refer to defendant J. Ford Pierson."—(p. 110. See also dep. p. 145.)

What a predicament! First it is represented and then sworn to, that this agreement, sometimes called a "memorandum,"—and sometimes "a paper"—"which agreement these defendants upon settlement delivered to defendant Derby,"—(the same identical one; see also dep. p. 145,) was written by Kerfoot. Then in a solemn document by two of

the parties to it, against the third,—when there is no reason or occasion for misrepresentation on that point,—they allege that it was written by Derby, and go on to tell how they found fault with it at the time. And when finally these two different accounts are brought face to face, they say the bantling is the child of *both* fathers! Well,—let us see it. It will speak the truth, on this point certainly. Alas! It had become odious to both these parents, and they conspired to destroy ti.

All the papers, little and large, connected with this transaction, except this one [most needed of all for the vindication of all these three defendants, if they are honest,] still exist. The agreement of March 6th, between Walker and Derby is described at length in the answers both of Derby and of Kerfoot and Pierson, and is in their possession,—(p. 145,) although it was the first paper of all in the transaction, and was superseded in a few days after it was written.

Derby informs us (p. 117,) that he has the six notes for the deferred payments, and the two trust-deeds, bearing date the 16th of March, 1867,—which he made to Walker, and discharged the 1st of June, 1867. And Kerfoot and Pierson say (p. 107,) of the notes and trust-deed which they executed, and insisted that Derby should (according to the agreement,) accept, and which became useless after the settlement and their quit-claim deed, of September 5th, 1868: "the same are now in the possession of these defendants, ready to be produced as this Honorable Court shall direct." —The all-important agreement of March 19th, 1867,—is the only writing of all, which cannot be produced by any of these gentlemen, who are so careful of old and useless papers. Is it not obvious that here is a *spoliation* of this paper: and that the maxim of law applies,—"*omnia præsumuntur contra spoliatorem.*" 1 Stark. Ev. (3d part) 489.

But what need is there of the original, even for proof of the handwriting? We have two carefully taken exact copies; one on the public records, (p. 48,) made by a sworn public officer—and the other in the bill of Kerfoot and Pierson against Derby, made by the solicitor of the former (p. 61); both taken from the original, and minutely agreeing with

each other. Can such a writing, whether original or a copy, be by any person mistaken for a production of Mr. Kerfoot?

Would Kerfoot in any degree of haste, have begun the instrument with this,—"In consideration of $375 to me paid by Samuel H. Kerfoot," &c.,—when he and his partner say in their bill against Derby, that they "objected to the "mention therein of $375 on the ground that said sum was "not to be paid?"

Again: would he, however "hastily and roughly"—doing the writing, have spelled the name of *his partner* "*Pearson*" instead of Pierson?

Or, would he, under any circumstances,—have put into the middle and belly of the agreement, the following as a complete sentence?—"It is agreed that if the said Kerfoot & Co. shall pay to me in cash $4,100—and the further sum of $8,700—payable in one, two and three years in equal payments and bearing interest at six per cent. per annum, secured by deed of trust," without adding the stipulation that he was then to convey the property as agreed? [Figures in this copy are written in words in the original.]

And is it not quite improbable that Kerfoot would of himself, have finished the instrument, with a condition of forfeiture of his and Pierson's interest, in case of failure to perform to the day?

Finally, the agreement is a contract between equals in respect to property of which they are to be joint owners. Would Kerfoot, in writing it, (however "hastily and roughly,") describe Derby the party on one side only as "*I*" and "*me*," from beginning to end,—as if all the community recognized him without more,—and in the same instrument describe himself and his partner, (the parties of the other part,) as "Samuel H. Kerfoot and J. F. Pearson, *known as S. H. Kerfoot & Co.*, of the city of Chicago,"—and throughout the rest of the paper mention them only as "said Kerfoot & Co?" The very agreement is stiff with the egotism of the rich speculator, who, in his own opinion, towers above and is the "observed of all observers."

It is simply impossible that this instrument was the work of Kerfoot,—and then "amended" or altered by Derby into its present shape. There is not a feature, a cast of expres-

sion, a single lineament in the vulgar thing., which had its paternity in Samuel H. Kerfoot.

The skeleton of it could not have sprung from him, any more than its deformed members and disgusting aspect.

6. To the charge and interrogatory 3, (p. 55,) in the bill, "whether said Kerfoot & Co. did not agree to divide or share such commissions and money so received of complainants, with defendant Wm. M. Derby, or whether said commissions were not or have not been so divided?—Defendant Derby "saith that said Kerfoot & Co. did not, nor did either "of said firm agree to divide or share any commissions or "money received of said complainants or any of them, with "this defendant, and that no commissions were or have "been divided by the said firm or either of the members "thereof, with this defendant."—(p. 125, near bottom,) To the same effect is another paragraph in Derby's answer, (p. 119, near the top,)

Kerfoot and Pierson answer in the same way with equal or more emphasis,—declaring that "they did not, nor did "either of them, *ever in any manner or way*, or *at any time* "*whatever*, agree to divide or share such commissions or "money, or any part thereof, with defendant William M. "Derby,—and that said commissions, or any part thereof "were not and have not, in *any manner or way whatever* been "so divided."—(p. 109.)

These men seem so reckless of consistency in their own statements—that no faith can be put in what they say. We have quoted before an extract from Kerfoot's letter of February 29th, and the false account he them gave of the making of the agreement of March 19th, 1867,—between Kerfoot & Pierson on one side, and Derby on the other,—in which Kerfoot says: "He said he would," [sell him half the land at half the price at which he was to get it,] "if *we would give him half the commissions* we had received. We said *we would*, and we at once drew a rough memorandum which he could not refuse to sign." &c.—And they all, following the statement of Kerfoot's letter, say that Derby agreed to sell to Kerfoot & Co. one-half of the property for one-half of the price agreed on with Walker,—provided

Kerfoot and Pierson "would, in addition thereto, pay him the sum of $375 or thereabouts, or an amount equal to one-half of the commissions," which they "ought to have received from the said John J. Walker," &c.; "to which proposition defendant Kerfoot on behalf of himself and Pierson, then and there assented and agreed."—(pp. 102, and 119–20.) The "memorandum" is the agreement of March 19th, expressing $375 as the consideration.

Now the commissions were (p. 47.)..... .....$715 00
And Derby had to pay for stamps on the trust deeds,
(an expense to be also divided) to secure $17,400.. 18 00

Amounting to.....$733 00
Of which one-half is..... 366 50
Add for recording fees and other little expenses
Derby was probably put to, say..... ..... 8 50

And the sum due to him would be.....$375 00:
Which it seems was paid, by being set off against an indebtedness of Derby's to Kerfoot & Co. for former services. (See their *Bill* against him,—(p. 61.)

7. That Kerfoot's letter of February 29th, 1868, was concocted to conceal the truth by subterfuges and falsehoods, it needs but a slight comparison of it with the other evidence to show. He was two weeks perfecting it. And certainly he shows himself in it, a wonderful adept in the *ars—celare artem.* For, with an admixture, of course, of facts known to Walker, he has so skillfully used the *suppressio veri & suggestio falsi*, and plausible falsehoods wholly untrue,—that there are very few persons ignorant of the facts who would not have been deceived as well as Mr. Walker, whose entire confidence had been won by Kerfoot's gentlemanly courtesy.—Attention has been already called to the cunningly false comparison in the letter, of the sales made by Walker and by Pryor. What he writes about *Andrews* is more artfully false. We have seen how eager Andrews was to purchase,—how he frequently, both before and after, Walker's arrival, had been to inquire of, and had conferred with Kerfoot and Pierson about it,—what arrangements he made to be sure of getting the property if it should

be sold within his idea of its value,—how, after an unconditional offer of $1,000 an acre for the land east of State street, he had exacted from them a promise that he should have the refusal of it *at any* price that might be fixed,—how, not hearing from them, he had telegraphed to know why,—and was informed that the land was sold,—how, immediately on his return, which was probably before, as he was certainly at home, on the 18th of March,—he called at Kerfoot's office,—Walker yet being in the city—and had an interview with Kerfoot, in which he charged him with breach of faith, evasion and subterfuge toward himself, and fraud toward Walker. Compare his account with that given by Kerfoot in his remarkable letter.

Kerfoot says: "The only person besides Derby who *intimated any willingness* to purchase, was a Mr. Martin Andrews. * * * He came into the office and said he was going away that afternoon to Ohio. I wanted him to meet you. He *declined* because that he had *no time*, and was not prepared to *speak definitely then of it.*"—He reports this as if Andrews had never on any other occasion than when about to leave for Ohio, seen them or talked of buying. After repeated calls before—Andrews called and told them that he was going to Ohio that evening on important business, as a reason, not for *declining to make*, but as the reason why he "*would like to make some definite arrangement* before "[he] left."—(p. 152,) He was there expressly "to *ascertain whether they had yet been able to name a price.*" He named one himself, the same that Pierson had suggested. Instead of inviting him to an interview with Walker (which Pierson might at any time before have effected,) "They stated that "this gentleman, Mr. Walker, *had not yet* been down to see "the property. * * Mr. Kerfoot told me that of "course they *couldn't name the price* until they had been down "there."—Kerfoot goes on to say of Andrews: "He said these things: 1st—He would not purchase that part west of State street *at all.*" [We have seen that Andrews told him that this was not true—but a subterfuge and evasion.] 2d. 'He would pay only a quarter cash, and the balance in three equal annual payments with six *per cent.* interest.' I told him you *wanted cash.*" [Andrews says the terms he offered

were "either one-fourth or $10,000 in cash, the balance in one, two, and three years," which were (the former he means) the usual terms. "There was *no statement that it would all "have to be paid in cash, by any means.*" (p. 157, ans. 66, 68:) 3d. "He would not pay more than $1,000 an acre even for the portion east of State street." &c. [So far from this, he had stipulated with Kerfoot himself that he should have the refusal of whatever price should be fixed on.] "4th.—All this depended on whether his brother-in-law would be able and willing to raise the quarter cash when he (Andrews) reached Ohio." [Andrews had already offered $1,000 an acre absolutely for that east of State street; had been running in and out of their office to get it nearly six months,—and was amply able, as his testimony and Averill's shows, and nobody controverts,—to make the purchase. His desire to interest his cousin in it, was probably to induce the latter to remove to Chicago. Kerfoot himself did not to Andrews allege this as an excuse for not offering the land to him,—but a different one—as the "only" one Andrews "could get" from him. (p. 154.)

"How long Mr. Andrews was gone," [Kerfoot continues afterwards,] "I do not know. *Sometime after you left*, he returned." [He was back and had his interview with Kerfoot before Walker left. (p. 153, ans. 30, 31; pp. 158, 159,) "and *in conversation regarding the land*, [how casual this is made to appear,] "we told him that the property was sold." [They had telegraphed that to him before.] "He complained *somewhat*," [This is Mr. Kerfoot's account of the stormy debate between them,] "and said that he had *asked* Mr. *Pierson* to *write* to him before the property was sold." [This, when Andrews swears that Mr. *Kerfoot himself*—not Pierson—had *promised* him—not been asked—that he would *telegraph*—not write—whatever price was fixed on—to him, Andrews, at *the addrsss he had furnished*,—and that he *was there* to reply. Was falsehood ever before more glozingly intermixed with fact! This account is written however to a stranger far away,—and closes with this ingenious argument to him: "You can see how advisable it would have been from the inducements his *indefinite talk* gave us, and how perfectly possible it would have been to have stepped in when you

and Derby had concluded your long negotiations, and said: "Hold on till we *write to Ohio* and see if Mr. Andrews will not give this price, or a better one," &c.

How much less careful Kerfoot was to speak the truth than to make a plausible explanation, is shown in a remarkable instance. Speaking (p. 76,) of the letter by which he was informed of Pryor's surprise at Walker's sale, Kerfoot says. "After—not before—Mr. Pryor had fully tried the market, *and had traded with* Mr. Derby,—we showed him your letter of April the 4th 1867, to us. He went over the ground with us, and, of course, said what we reported to you in *our letter of April 11th*, same. He could say nothing else. He *had done his best*, and that best was no better than you had done." Now Pryor did not trade with Derby until the 19th of April,—(p. 176,) and his deed was delivered the 26th of that month.—(p. 175,) Of course, this was not known to Mr. Walker. So, in this plausible account by Kerfoot of the dignity of his intercourse with Mr. Pryor, he speaks of communicating to Mr. Walker in a letter of the 11th of April, what occurred he takes pains to say, after an event, which did not itself take place until the 19th of that month.

He was no more truthful in what he reported in that letter of April 11th, than in the other. He says in it, "Mr. Pryor, on examination, agrees with me that under the circumstances—taking the swamp, the undivided interest," &c., &c., and the sale being to one person *in bulk, you did well.*"—Now Pryor, in as polite a way as he can, contradicts this. He says: "I think it is impossible that I should have expressed "such an opinion to him. * * I think it impossible I "should have made such a statement to any one. If I did "make such a statement, it was *an untruth*: for I *certainly never thought so*: therefore, I think I never could have made such a statement."—(p. 166, ans. 62 & 63, and see p. 176 below the middle.)

This gentleman, Mr. Pryor, seems to have been the object of a large amount of spite on the part of defendants. Being an old friend of Judge Hopkins and his family, and believing them to be wronged, he took some little interest in this suit after it was brought; and when called on, he testified on their behalf; notwithstanding his relations with

Derby (who had negotiated the sale to or purchase by others of a good deal of Pryor's property,) were quite advantageous to him. But Mr. Pryor did not instigate this suit. After his letter in the spring of 1867, expressing surprise at the sale for $800 an acre, not a syllable had passed between him and Walker on the subject (p. 229.) until March, 1869; when Walker, being informed by others, of some startling facts, desired before yielding to the conviction that Kerfoot and Derby had conspired to swindle the plaintiffs, —to learn from Pryor what had occurred about the same time between him and them. (p. 144,) Walker says: "I required further evidence, and went on to New York to see Mr. Pryor, from whom I learned that Kerfoot's report in his letter to me of April 11th, 1867, about his, (Pryor's) opinion of the sale, was a pure fabrication; that so far from agreeing with Kerfoot that it was a good sale,—Kerfoot's efforts to persuade him that it was a good sale, had literally destroyed his confidence in him." Of course this means his confidence in Kerfoot as an agent to sell lands. And it is evident from the whole of Pryor's testimony that this was true;—that he was satisfied that Kerfoot could not be trusted in that relation. And although he continued to employ Kerfoot to pay taxes, and to negotiate for some sales, —he never empowered him to sell, except on terms which he himself approved.—(pp. 176 & 179.)

But Mr. Pryor was persecuted through many days of cross-examination, with the most insulting and irrelevant questions, which assumed often, that he had previously said what he had not said, and implied charges of perjury, in the tone and form of them. The result of this excess, however, was mainly to compel from Mr. Pryor a disclosure of the character of Derby for strong will, persistent industry, artful expedients, and various influences, by which, without much scruple as to the means or objects, but with great craft,—Derby accomplished his purposes,—and to show the witness to be an upright, conscientious and highly intelligent gentleman.

8. Attention has already been sufficiently called to the bill of Kerfoot and Pierson against Derby, with reference to another point.

Other matters are as obnoxious to criticism as those that have been discussed. For instance,—who cannot see how blunderingly false are the pretenses of Derby, that through *divers persons*, (not one of whom has been examined to prove it,) and in *divers ways*, (there is no advertisement or notice,) he had tried, after he had bought, to sell the land at $1,000 an acre, on credit, and could not? Although all of them swear that he bought at a bad time for Walker to sell—and would not buy unless at *a "bargain,"*—and took time to examine the land,—the court is asked to believe that the shrewd, sharp, rich and self-confident Derby, not only made a bad bargain in this transaction,—but afterwards, when the *grass was green*, came back to Kerfoot with childish complaints of having been outwitted. Why, in a short time after Walker left,—probably before *the grass became green*,—Derby, with the aid of Pryor's agents, Kerfoot and Pierson, (who, by the way, did not introduce any other buyer than Derby to either Pryor or Walker,) was urging Mr. Pryor to sell him more of this same land at a much higher price, with the argument that he would in that case improve it and so enhance the value of all of that property;—and that if Pryor would not sell to him, he himself would sell the Hopkins land; *which he could "do at a good profit."* (pp. 165 and 185.)

Moreover, it is pretty certain that Kerfoot and Pierson were themselves interested in Derby's purchase from Pryor.—The latter was to have met Walker at Chicago. Walker says, (p. 141,) "I expected to meet there Mr. J. W. Pryor, of New York, who was *thinking of selling* about that time a portion of his property: but I found a letter there from him, *addressed to Kerfoot's care*, stating that he could not meet me as he had promised, owing to bad health." Advised doubtless by this letter, and by Walker,—S. H. Kerfoot & Co., so soon as they were through with him, on the very next day, March 20th, 1867, write a letter (p. 208) to Pryor, as if to prepare him by its artful suggestions to take a low price for his property,—mentioning that Walker had sold at $800 an acre. Did they not expect to be interested in the purchase from Pryor also? Were they not interested in that purchase? On *the very next day* after the delivery of Pryor's deed to Derby, "a portion of the property [which

Pryor] sold to him was conveyed to Mr. Pearson," (p. 182,) of which Pryor heard nothing till more than two years afterwards.

IV. Why is it, finally, that the defendants themselves did not come in, as witnesses and subject themselves to a cross-examination for the vindication of their conduct and in defense of the large property involved in this cause? The acts of Congress authorized them to do so. The courts say that "those who meddle with such transactions *take upon themselves* the whole proof that the thing is righteous." And a multitude of facts and circumstances were proved impeaching their integrity and their title. Yet they could not be *scourged* by all these things into offering themselves as witnesses, subject to cross-examination, in regard to their own transactions. *Qui tacet cum loqui debet, consentire videtur.*

What can be said of these men but what this court said of others in a prosecution, upon much less evidence, for fraud against the revenue laws? "The extraordinary cir-"cumstances connected with the concealment, * * the "prevarications and false statements of Blackburne, and "the undervaluation * * all required *the most plenary* "*proofs to deliver* the property from the perils by which it "was surrounded. * * * Taylor and Blackburne were "so completely mixed up in these transactions as principals "and agents, or as joint principals, that the acts of one "might most justly be attributed to the other; and, in fact "they *admit of no reasonable separation* as to design or priv-"ity of co-operation." *Taylor et al.* vs. *The United States*, 3 How. R., p. 214.

If this were so in a case purely *penal*, which involved a forfeiture of defendants' own property, and in which they were not admissible witnesses,—how much more so in such a cause as this, in which defendants are required only to account for unjust gains from property that did not belong to them,—and in which they might have introduced themselves as witnesses?"

V. In view of all the evidence, what is the true history of the agreement reduced to writing under date of March

19th, 1867? It has not been given (except *partially* in the bill of Kerfoot and Pierson against Derby), by any one of them.

It was not the 16th of March, as that bill alleges, when the agreement was "made verbally." Any one can now see, what Andrews saw in March, 1867, and charged upon Kerfoot,—that the latter was interested in the purchase of Derby when it was agreed on;—that he would not except for such a reason, decline a higher offer for a lower one. And the agreement then, (as the bill of Kerfoot and Pierson shows,) *did not touch their commissions.*

But these men could not trust each other. The papers between Walker and Derby were all prepared and dated the 16th of March, but not delivered till the 19th. Before they were delivered, Kerfoot and Pierson must have their part secured to them. It would be an awkward thing, if after the delivery of the papers, Derby should send them adrift. They could not then get anything but revenge; and that, only by exposing their own fraud and perfidy. He was pressed, therefore,—but was surly and stubborn, and they were persistent; doubtless threatening him with a sale to Andrews—who was actually back in the city before the papers were mutually delivered, or any money paid.

Brought to the point of signing an agreement, Derby insisted that if they were to have half the lands, he ought to have half of their commissions, and thus pay half of the expenses; their partnership should be equal:—and he so drew up the instrument, although they objected to this, as shown by their bill.

But even after that, Derby refused to comply: And as the title was in him, he would doubtless sell the land. To prevent this,—after tendering him money, the notes and trust-deeds, (according to the agreement,) and insisting on performance on his part, in vain,—they, on the 31st of August, 1867,—are forced to put the agreement on record;—to which a few days after, they add an affidavit of their tender and offers to perform.

Derby holds out a year longer; and the property having become very valuable, he makes contracts of sale; which they are too vigilant not to know. Then they prepare their

bill for a specific performance, and interfere with purchasers, to prevent them from consummating their purchases. Does any one believe that Derby is not informed by attorneys and mediating agents, that a bill is prepared?

At length a compromise is effected: a quit-claim deed to Derby is executed by Kerfoot and Pierson. And they, instead of getting some $60,000 to $70,000, one-half of the profits,—accept about $28,000 in money and property, in full.

The settlement itself is a condemnation. The agents would never have sacrificed so much,—if their title was not, consciously to them, invalid. True—Derby knew this also. He dare not expose it; because by doing so he would undermine his own title. Nevertheless, he had the advantage of them. Exposure would not only defeat their claim, but also *destroy their business:* and more of *odium* would attach to the perfidious agents than to the fraudulent speculator. They had therefore to be content that he should have "the lion's share."

VI. It has been felt as a duty that this discussion should be had of the evidence in this cause, of fraud accompanied by deceit, and followed by misrepresentation and falsehood; —because a desire is evinced in the answers of all three of these defendants,—to prevent by indirection the plaintiffs from getting the $28,000, which Kerfoot and Pierson received of the proceeds of this land. For we infer,—that if it should be decreed that plaintiffs recover that sum from them only, and Derby, who paid it over to them, shall not be also made liable for it, as well as for the rest,—it will not be realized at all.—The answers show that Derby conveyed the west half of block 5, (which Shepherd conveyed to Honore for $21,000,) to Shepherd, for and at the request of Kerfoot and Pierson, to *prevent it from being made liable* for *a judgment* which some other person had against Kerfoot;—(p. 109,) which itself was a fraud against this judgment-creditor. And all of these defendants take pains to aver that Kerfoot and Pierson have no interest in these lands,—or in the notes and securities given for them,—but have transferred the latter.—(pp. 109, 128.)

The liability at law, in a case of fraud by several, even

where one of the parties had no part in concocting the fraud, is thus stated by the Supreme Court of the United States: "If, knowing the fraud contrived, he aided in its execution and shared its proceeds, he was chargeable with all its consequences, and could be treated and pursued as an original party."

Lincoln vs. *Claflin*, 7 Wallace, p. 138.

And a judgment against both would be executed in full against both or either.

In equity the rule is the same: "A purchaser with notice is liable to the same equity, stands in the place and is liable to do what his vendor would be bound to do by a decree.

"Although a purchaser with notice be not a party to the original fraud,—yet he is considered an accessory after the fact."

Dunbar vs. *Tredennick—supra.*

Accordingly *Tredennick*, although he had paid £3,400 to the fraudulent agent, for the premises, was required to reconvey them to the original owner and pay him rents and profits,—and was credited only with the smaller sum which the agent had paid to his principal.

Much more plainly are original co-conspirators liable, jointly and severally.

In cases of merely *constructive* fraud against several parties, a court of equity will sometimes make each liable only for his own share of the proceeds. But to do so—in a case of clear, direct, meditated fraud—with features of most odious character,—to do so in such a case as this, would be a following up of offenders, *haud passibus æquis.* It would be a notification to the crafty, that in order to succeed, they must confederate with insolvent persons and pass most of the proceeds through the hands of such.

Besides, it should not be forgotten that in cases like this, (as was said in the great case of *The York Buildings Co.* vs. *McKenzie*, 8 Tomlins Brown, 42, 63,) "the *danger is imminent* and the *security* against discovery is *great.* The difficulty of prevention or remedy is inherent to the very situation which creates the danger."—

In this cause the discovery was made only by reason of a

controversy between the fraudulent confederates. Who can know in how many other similar transactions these real estate agents have been concerned?

By his own fraudulent conduct and combination with plaintiffs' agents, Derby put himself in the position of being held to account,—(and knew it,)—as a trustee for plaintiffs. —And as such trustee he must account for the whole proceeds of the property that came to his hands, without any abatement of what he has paid to others who had no right, —less that only which plaintiffs have already received,— and less, perhaps, that which has been expended in permanent improvements that go to plaintiffs. Though even as to this,—"Where there has been actual, conscious fraud, a trustee would probably not be allowed for the value or cost of improvements."

1 Leading Ca. in Eq Hare & W. notes, top p. 145.

Mr. Walker, one of the plaintiffs in this cause, was acting on behalf of others,—as well as on his own account. His deposition ought to be read throughout. Of spotless integrity himself,—and finding in Mr. Kerfoot, long the agent of Judge Hopkins, a man of amiable manners and cultivated mind, who was also then the agent of his and Judge Hopkins' friend, Mr. Pryor,—and being received by this agent and entertained by him in the most courteous style,— with professions of sympathy with him as a Southern man,— he is not to be blamed for the unreserve with which he reposed confidence in Mr. Kerfoot and his partner.

How difficult Mr. Walker found it to admit that this confidence was misplaced, may be seen frem the delicate manner in which, in his letter of February 24th, 1868, he informs Kerfoot of the report that he was interested in the purchase by Derby. "If I represented, (he says,) my own interest alone, I should not annoy you with any notice of such a report. But as I represent a number of heirs of the estate, who might hereafter be approached on the subject, and censure me for ignoring it, I deem it due to myself and to you, to make this communication and to ask a reply."—(p. 70.]

That there was no mere affectation of politeness, here, is evident from the fact, that Mr. Kerfoot's explanations and reply of February 29th, (sent about the 14th of March,) did satisfy Mr. Walker. It was not till more than a year afterward,—when the bill of Kerfoot and Pierson against Derby was shown to him,—and when he saw and conversed with Mr. Pryor, that he was convinced that he had been the victim of a fraudulent conspiracy.—Then any hesitation about bringing these conspirators to account,—so far as concerned himself, only, would have been weakness,—and so far as the rights of the heirs spoken of, were involved,—would have been a breach of duty.

A. R. MANNING,
of Counsel for Plaintiffs.

March, 1870.

ADDENDUM.—To come in near middle of page 23—*ante.*

To avoid returning to this point again, attention is called to this further evidence in regard to it,—if it were in issue.

1st. The abstract of title exhibited with Monroe's testimony (pp. 274, 280,) signed Shortall & Hoard—was, of course, as it purports to be, only an abstract of the *recorded* title: Therefore, it would not contain the declaration of trust, which it was never thought necessary to record. 2d. The will of Judge Hopkins (made in 1859,) mentions that a part of his property at Chicago, belonged to Maria Walker, and John J. Walker. Though this was not a part of the property in dispute,—that fact did not appear by the will,—but would have to be explained. Of course the buyer asked for an explanation. And if Walker in making it, made *Derby believe* that he and Mrs. Walker had no interest of their own in this property,—this fact, especially when it was afterwards learned that they had such an interest,—would have made a strong impression on the mind of Derby

and the other defendants; and when that interest was afterwards set up so prominently in the bill,—the spontaneous and prompt answer to it would have been,—that they were deceived and misled by Walker in regard to this.—Instead of that, Derby makes answer as above; so does Kerfoot and Pierson; and Monroe, their counsel and himself a defendant also, assents to their so answering. No pretence of fraud or misrepresentation on the part of Walker is set up by anybody. 3d. Walker, in his deposition,—answering an interrogatory which requires a complete history of the transaction,—having got through with his account to the close, about the 1st of June, 1867,—and on reading it, or hearing it read over,—observing an omission in it, adds: "I should "state as a *fact* in the history of the *transaction*, that *pend*-"*ing the negotiations*, I told both Kerfoot and Derby of the "extent of the interest of my wife and myself in the prop-"erty; and I consulted Kerfoot as to the propriety or ne-"cessity for recording in Chicago the declaration of trust "which I held from my testator." [which shows that he had it there with him.] "He said that it was not at all "necessary—as the will was on record there,—that the sup-"plemental deed *would* convey the title of my wife and my-"self,—and recording the declaration of trust was not essen-"tial to any interest." Now it is plain that Walker here refers to disclosures made by him to Kerfoot and Derby, "pending the negotiations" relating to "the transaction"—the making of the sale. No one would understand it otherwise. And in respect to the particular conversation mentioned in addition, as having been had with Kerfoot alone, the reply of the latter, that the supplemental deed "*would*" —not did—make all right,—shows that this took place about the 16th or 19th of March (the deeds are all dated the 16th,) before Walker left Chicago,—after the supplemental deed had been agreed on, and probably when they were talking about the recording of the deeds then being executed. And this testimony, taken sometime before,—the defendants, by their *solicitors and counsel*, Monroe & McKinnon,—on the 31st of January, 1870, consent (of course knowing the contents,) may be read as evidence.—(See p. 134.)

But it occurred to some one, studying the case for the

hearing, that as this testimony was given by Walker after he had given his account of the settlement, about the 1st of June, it might be got around as evidence relating to that settlement only,—if some testimony to *that* effect were in.—So just as the cause is about to be heard,—"the inevitable Derby" is put upon the stand against objection, (p. 273,) and asked the leading question: "Had you any knowledge, or information of the declaration of trust set forth on the 2d page of the bill in this case *until about the 1st of June*, 1867?"—And Mr. Derby says that he had not.—And Mr. Monroe, his attorney, says also that *he* had not.

It is believed that it will be shown in the sequel, that no credit whatever ought to be given to Derby. And we leave the testimony of Mr. Walker, against whose integrity and frankness, not an allegation, or jot of evidence has been brought,—aided by the admissions in Derby's answer, and by the circumstances,—to stand against the testimony of Mr. Monroe; who testifies only to what he remembers, or does not remember,—not about Derby's information.

Supreme Court of the United States.

DECEMBER TERM, A.D. 1871.

JOHN J. WALKER ET AL.
vs.
WILLIAM M. DERBY ET AL.
In Equity.

POINTS AND AUTHORITIES FOR THE DEFENDANT DERBY.

I.

The suit is brought to rescind a sale of real estate made to Derby in March, 1867, for the alleged reason, that he fraudulently conspired with the plaintiffs' agents, to buy the property in his name, but secretly for his and thei joint benefit, at a price grossly inadequate. It is a charge of positive fraud.

II.

The defendant was required to answer the bill under oath; and he has met the plaintiffs' charges with a direct and positive denial. His answer, therefore, becomes evidence, and it is not to be discredited, nor is any presumption to be indulged against it, on account of its being the testimony of an interested party.

3 Greenleaf on Evidence, § 284,
and cases there cited.

III.

His answer is conclusive evidence against the plaintiffs, unless it be overcome by the satisfactory testimony of two opposing witnesses, or of one witness corroborated by other circumstances and facts, which give to it greater weight than the answer.

2 Story's Eq. Jurisp., § 1528,
and cases there cited.

IV.

His testimony is fully corroborated by the answer of his co-defendants, which was also made under oath. Their answer is also evidence, and may be used in his favor.

Mills vs. Gore, 20 Pick., 28.
Field vs. Holland, 6 Cranch, 8.
Miles vs. Miles, 32 N. H., 166.

V.

The plaintiffs have proved by no witness, that any material fact stated in the defendants' answer is untrue. There is no direct evidence whatever to sustain the case stated in the bill.

VI.

The collateral facts and circumstances shown in evidence, sustain the defendants' answer. The proof shows the purchase to have been in all respects fair, and that the price paid was all the property was then worth. There is no reliable evidence, either direct or indirect, to establish the plaintiffs' charges.

VII.

The bill in chancery set forth in exhibit A, annexed to the amended bill, was never filed, or signed by the parties named as complainants therein; and there is no purpose for which it can be used as evidence.

Boileau v. Rutlin, 2 Exch., 665.

Derby never saw it. It was intended as the commencement of a hostile proceeding against him, of which, however, he had no knowledge, and is, therefore, entitled to no consideration so far as he is concerned. It forms, moreover, no part of the evidence read at the trial.

VIII.

The sale made by Derby to his co-defendants, was after their agency had terminated. Their disability to purchase had then ceased; and the plaintiffs have made out no case either of actual or constructive fraud.

Kearney v. Taylor, 15 How., 494, 522.
Wortman v. Skinner, 12 N. J. Ch., 358.
Geddings v. Eastman, 5 Paige, 561.

C Beckwith & Com
for Derby

SUPREME COURT OF THE UNITED STATES

December Term, A. D. 1871.

JOHN J. WALKER ET AL.
vs.
WILLIAM M. DERBY ET AL.
In Equity.

Argument for the Defendant,

WM. M. DERBY.

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Supreme Court of the United States.

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for the first time made co-defendants. By this bill, which was intended and treated as a substitute for the previous one, answers were required from the defendants under oath; and such answers were afterwards filed by all or most of them. Kerfoot and Pierson filed their joint and several answer, and Mr. Derby his separate answer, on the 4th of November, 1869, each verified by their respective oaths. Replications were made to these answers; and on the 6th of July, 1870, the cause came on to be heard, upon the pleadings and proofs, before the Hon. H. W. Blodgett, District Judge, who, on the 5th of August, 1870, directed a decree to be entered, dismissing the complainants' bill. The cause comes up to this court on an appeal from that decree; and the question to be determined is, whether the complainants have established such a case, as entitles them to the relief sought in their amended bill, against the defendants, or either of them. In the decision of this question, the three principal defendants, Derby, Kerfoot and Pierson, are each interested, but they are not identified in interest. Their positions, though not antagonistic, are not precisely the same. For this reason, it is here proposed to consider the case of Mr. Derby separately; and the argument will be confined mainly to the single object of showing, that, so far as he is concerned, the complainants have wholly failed to sustain their bill.

The bill is filed in behalf of eleven persons, who claim to be jointly interested in the sale of certain lands, made to the defendant, Wm. M. Derby, in the year 1867. The object of the bill is, to set aside the sale, and obtain a re-

conveyance of so much of the property as he has not disposed of, and to compel the defendants to account for, and pay over the proceeds of the residue.

The ground upon which relief is claimed against the defendant Derby, concisely stated, is this: That on or about the 1st of March, 1867, the complainants by their agent, John J. Walker, executor of the last will of Arthur F. Hopkins, who acted as such agent and executor on their behalf, and for himself, employed the defendants Kerfoot and Pierson, who were real estate brokers at Chicago, to sell the lands in question, and for such service agreed to pay them certain commissions; that the defendant Derby, knowing that Kerfoot and Pierson had been so employed, fraudulently conspired with them to effect a purchase of the property, in his name, but secretly, for his and their joint benefit, at a price below its real value; that pursuant to this secret understanding, Derby concluded a bargain for the lands, and obtained a conveyance; and to express and carry out the secret understanding and agreement so corruptly made, the said Derby, Kerfoot and Pierson executed a certain contract in writing, which is set forth in the bill, bearing date the 19th of March, 1867, by which Derby agreed to sell, and they agreed to buy, one-half of the property he had so purchased, at the same price he had paid for it, and on similar terms.

This is the sole ground suggested in the bill for setting aside the sale made to Derby. It is not claimed, and has never been pretended, that any relation existed between the complainants and Mr. Derby, which disabled him from

becoming a purchaser. It is not charged that he was their agent, or that he had any duty to perform which was inconsistent with the character of a purchaser. His right to purchase the property, and to buy it at the lowest price and on the best terms he fairly could, is not questioned. The accusation against him is that he acquired the property fraudulently by secretly colluding with the complainants' agents, and aiding and abetting them in the commission of a willful breach of trust. It is a charge of positive fraud; and the only question to be determined is, whether the case stated has been proved. The court below decided that question in the negative; and a fair examination of the evidence will, we think, satisfy this court, not only that the case stated has not been proved, but that it has been absolutely disproved.

1. The first piece of evidence to be considered in passing upon this question, is the defendant's answer. Availing themselves of a privilege which the law gives to suitors in equity, the complainants decided at the outset to make the defendants themselves witnesses, by calling for their answers under oath. Their answers were filed, and no exceptions were taken to them. They are not drawn in a very artistic manner, and are plainly enough not the work of a practiced pleader. Slight inaccuracies in the form of expression may be occasionally detected in them; but these deficiencies will not prevent them from being read as they were manifestly intended, in a court which looks rather to the substance of things than their forms. This, at least, can be said in their favor: they were not meant to be equivocal or evasive. Every material aver-

ment in the complainants' bill is fully and plainly answered.

The charges which Mr. Derby was called upon to meet have been already noticed. To these charges he makes a direct and positive denial. He avers that he was the only person interested in the purchase of this property; that he bought it for his own exclusive benefit, and that neither Kerfoot & Co. nor either member of that firm, were in any way connected with him in the trade. He states that no arrangement or understanding existed, by which they were to become interested, and that he did not even advise with either of them about making the purchase. He gives, moreover, a particular account of the entire transaction from the commencement of the negotiations to their close; and his statement is substantially this: He says, that on or about the third of March, 1867, Mr. Kerfoot informed him that this land was for sale at their office at $1000 an acre, cash, and invited him to purchase it at that price. He declined the offer, but said he would be willing to buy it, if he could get it for what he considered it worth. Mr. Kerfoot then asked him to make a cash offer, to which he replied, that he would not pay cash for that or any other piece of real estate, unless he could buy it at a good bargain. Mr. Kerfoot then told him that Mr. John J. Walker was in town for the purpose of selling the property, and requested him to go to his office and talk with Mr. Walker personally. They went to the office, and Mr. Derby was there introduced to Mr. Walker. This gentleman told him that he had come to Chicago for the express purpose of selling this land, and

he requested Mr. Derby to make him an offer for it. Derby declined to do this, until after he should have examined the land and satisfied himself as to its value. After this interview, Mr. Derby went out to look at the property, and on the 6th of March again met Mr. Walker at Kerfoot & Co.'s office. He then made Mr. Walker an offer of $25,600 for the land, one-fourth cash, and the residue payable in three equal annual installments with six per cent. interest. Mr. Walker refused to accept this offer, but finally proposed to sell him the land at that price, if he would pay him $8,200 in cash, and the residue in three equal installments as first suggested. Mr. Derby accepted the proposal, and thereupon, at Mr. Walker's request, as evidence of the bargain, an agreement in writing was drawn up and executed by both parties, by which Mr. Walker, as executor of the estate of Arthur F. Hopkins, agreed to sell to Mr. Derby, and Mr. Derby agreed to buy the land in question for the sum of $25,600, payable $8,200 in cash, on delivery of a good and sufficient deed, conveying the premises free and clear of all incumbrances, and the residue in three equal annual payments, with interest thereon at six per cent.; the notes for the deferred payments to be secured by mortgage upon the premises; and all the papers to bear even date with that agreement. This contract, by the consent of both parties, was left in the hands of Mr. Kerfoot until the title should be examined, and the deed executed and delivered to Mr. Derby. Soon afterwards, an abstract of title was furnished by Mr. Walker, which Mr. Derby submitted to his attorney for examination.

Some exception was taken by the attorney to the probate of the will of Arthur F. Hopkins, in whom the title to the premises appeared of record; to obviate which, Mr. Walker proposed, that if Mr. Derby would then pay him the $8,200 cash, and execute the securities for the deferred payments, he would, in addition to his own deed as executor, then to be executed and delivered, afterwards procure and deliver to Mr. Derby, as soon as possible, a quit claim deed from all the other parties interested, and that the notes executed by Mr. Derby should be deposited with Messrs. Kerfoot & Co., to be held by them until this confirmatory deed should be procured. Mr. Derby assented to this proposition; and on the 19th of March, received from Mr. Walker a deed executed by him as Mr. Hopkins' executor, purporting to convey the premises in fee simple. Mr. Derby thereupon paid Mr. Walker the $8,200, and executed his notes for the deferred payments, and two trust deeds to secure them. The papers all bore date the 16th of March. The notes were left with S. H. Kerfoot & Co., to be given up to Mr. Walker on the delivery of the confirmatory deed, but the trust deeds made to secure them were filed for record on the 19th of March. Some days afterwards, but before the confirmatory deed had been delivered, Mr. Derby, after having tried the market, told Mr. Kerfoot, that he had offered the land for sale to various persons at $1000 an acre, upon credit, but could find no purchaser, and that he thought he had paid for the land more than it was worth. In reply to this, Mr. Kerfoot offered, in behalf of his firm, to take an undivided half of the property from Derby, at the same price he had

given for it and on the same terms. Mr. Derby said he would agree to that, provided they would give him $375 in addition, which would be equivalent to about one-half of the commissions they should have received for assisting Mr. Walker to make the sale. Mr. Kerfoot accepted the offer, and thereupon drew up a rough memorandum embodying the substance of their agreement, which was signed by the parties, and ante-dated as of the 19th of March, so as to correspond in date to the day of Mr. Derby's cash payment to Mr. Walker.

This is the substance of Mr. Derby's answer to the material allegations of the bill. He was required by the bill, to make a "full and complete disclosure of all his acts and doings in the premises;" and he has done so. His statements are clearly responsive to the complainants' charges. He meets those charges with a positive denial, and sets up nothing subsequent to, or *dehors* that which is alleged against him, by way of avoidance. His answer, therefore, becomes evidence, and it is not to be discredited, nor is any presumption to be indulged against it, on account of its being the testimony of an interested party.

3 Greenleaf on Evid., § 284, and cases there cited.

It results from this, that the plaintiffs have not only failed to prove their averments, by the discovery elicited from Mr. Derby, but they have made his answer evidence against them; and according to the long-established rules of equity practice, it is conclusive evidence against them, unless it is overcome by the satisfactory testimony

of two opposing witnesses, or of one witness, corroborated by other circumstances and facts, which give to it greater weight than the answer.

2 Story's Eq. Jurisp., § 1528, and cases there cited.

2. We have next to consider the answers of the two other principal defendants, Messrs. Kerfoot and Pierson. It will not be necessary to refer to their statements in detail. It is sufficient to say here, that they make a full disclosure of all the facts within their knowledge, relating to the matter complained of, and their evidence confirms, in every essential particular, the account given of this transaction by Mr. Derby. The plaintiffs have failed to elicit from either of them, any evidence of the fraudulent conspiracy, on which their claim for relief is founded. And more than this, they have made the statements of both these gentlemen legal evidence in Mr. Derby's favor. For it is a recognized rule, that when the plaintiffs call upon a defendant for a discovery, *they* cannot be allowed to say that his answer is not testimony. If it be responsive to the bill, it may be used as evidence against the plaintiffs, in favor of a co-defendant.

Mills v. Gore, 20 Pick., 28.
Field v. Holland, 6 Cranch, 8.
Miles v. Miles, 32 N. H., 166.

It is further to be observed respecting the answers of these three defendants, that their assertions touching the matters of fact in controversy, are made from actual knowledge. They do not testify from mere information

and belief, but from what they personally know. Their statements are not mere inferences or deductions drawn from collateral facts and circumstances, but positive declarations respecting what they themselves did, and transactions which passed under their own eye; and they are, therefore, entitled to all the weight which properly belongs to the testimony of witnesses, who speak considerately from unquestionable knowledge.

3. The complainants having signally failed to make out their case by the testimony of the defendants, the next inquiry is, whether they have succeeded in proving it by other evidence, sufficient to overcome the force of the two answers. The record will be explored in vain for any such evidence. It will not be pretended there is any direct testimony. Not a single witness has been produced, professing to have the slightest knowledge, that S. H. Kerfoot & Co. had any interest in this land, or expectation of acquiring any, until after the sale was made to Mr. Derby and consummated by the delivery of Mr. Walker's deed. On what, then, do the complainants rely for proof of this alleged fact? They are compelled to rely wholly upon indirect evidence; and the court will be asked to infer, that the alleged fraud was actually perpetrated, and that the three defendants have sworn falsely, solely from the evidence of circumstances. It will be necessary, therefore, to notice the circumstances relied on, with a view to ascertain, in the first place, whether they have been proved; and in the second place, whether, if proved, they are sufficient to establish the charge, in face of the positive testimony of three opposing witnesses.

4. The principal facts bearing upon the point in controversy, appear from the evidence to be substantially these: The property in question consisted of several separate parcels of land, lying just south of the southern limits of the city of Chicago. It will be more convenient, however, and correct enough for all practical purposes, to consider it as consisting of two distinct parcels. The first was an undivided half of twenty acres, situated in the north-east corner of section 4, and bounded on the east by State street. The second parcel comprised the east half of blocks one and six, all of blocks four and five, and lots one, two, twenty-three and twenty-four, of block twelve, in Pryor and Hopkins' subdivision in the north-west quarter of section 3. Pryor and Hopkins' subdivision was separated from the first-mentioned tract by State street; so the two parcels, though lying in different sections, were nearly contiguous. Their situation will be readily apprehended, by a glance at the plat on page 71 of the printed record. The superficial contents of the several lots and blocks composing the second parcel, including the streets, appear to be exactly as follows, (Pr. Rec. p. 78.):

E ½ of block one - - - -	3 $\frac{318}{}$ acres
E ½ of block six - - - - -	3 $\frac{318}{}$ "
Block four - - - - - -	6 $\frac{636}{}$ "
Block five - - - - - -	6 $\frac{636}{}$ "
Lots, 1, 2, 23, 24 in block 12 -	1 $\frac{348}{}$ "
Total area, - - -	21 $\frac{256}{}$ acres.

If we add to this the undivided half of the first parcel,

or 10 acres, it will be seen that the whole property comprised just about 31¼ acres. These lands belonged for several years to Arthur F. Hopkins, who resided at Mobile, in the State of Alabama, and who died in that city on the 8th day of November, 1865, still holding the title. The evidence does not show precisely when, or how, he acquired the undivided interest in the 20 acres, but it must have been previous to 1859. The other lands, lying in Pryor and Hopkins' subdivision, he acquired in 1854, from James W. Pryor of New York city, who had previously purchased the north 70 acres in that subdivision. On the first of May, of that year, Mr. Pryor conveyed to him an undivided third of the 70 acres. Pryor subsequently purchased the 10 acres adjoining this tract on the south, and afterwards, on the 30th of May, 1856, united with Mr. Hopkins in causing the 80 acres to be subdivided, and platted on a recorded map, entitled, "Pryor and Hopkins' subdivision of the west ½ of the N. W. ¼ of sec. 3, township 38, N. of range 14 E. of the 3rd principal meridian." On the 3rd of July following, Hopkins and Pryor made a partition deed, by which their respective portions were set off to each in severalty, Mr. Hopkins taking for his portion the separate parcels before mentioned. (See abstract of title, pp 274–280 of Pr. Rec., and Pryor's testimony, pp 179 and 180.)

Mr. Hopkins was also interested in another tract of 10 acres, lying along Halsted street, in section 33, inside the limits of the city of Chicago, which he and Mr. Pryor purchased in April, 1854, from the Hon. John Wentworth. Each had an equal undivided interest in the 10 acres,

which they continued to hold until the war commenced in 1861, when they suffered their interests to be forfeited or foreclosed, for default in making further payments. (See Pryor's testimony, pp. 183 and 184 of Pr. Rec.)

On the 12th of May, 1859, Mr. Hopkins made his last will, which is made a part of the bill of complaint filed in this cause, and set forth on pages 23 to 28 of the printed record. He made no devise of his real estate by his will, but conferred upon his executors, or either of them, if only one should qualify, full power and authority to sell and convey all his lands wherever situated, upon such terms as they should consider most advantageous. The proceeds of those sales he directed to be distributed among his children, his wife also to have a child's share. In the first clause of the will, there is found the following declaration: "I have a title to about thirty-six and a quarter "acres of land at and adjoining the city of Chicago, in "the State of Illinois, but my daughter, Maria Walker, "has an undivided interest in them of two acres, which "can be ascertained from an instrument in writing I made "in her favor; and my son-in-law, John J. Walker, has "an undivided interest of two and a half acres in them, "*being in that part of my land consisting of ten acres belonging* "*to James W. Pryor and myself*, and for which the said "Walker holds my written contract." It is evident from this language, that the interest of his daughter and of her husband, there referred to, amounting to 4½ acres, was an interest in the 10-acre tract purchased by Mr. Hopkins and Mr. Pryor, from John Wentworth. These two owned

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together no other 10-acre tract at or near Chicago. It is plain, at any rate, that neither Walker nor his wife appear from this clause of the will, to have owned any interest in the 31¼ acres lying in and next adjoining Pryor and Hopkins' subdivision. Mr. Walker is, therefore, evidently mistaken, when he says, speaking of these 31¼ acres, that himself and wife became part owners of the interest of the testator in those lands, under the instruments described by the testator in his last will. (See Walker's testimony, p. 136, Pr. Rec.) There is nothing in the will, and nothing in the abstract of title furnished to Mr. Derby, to show that either Walker or his wife had any interest in those lands, apart from her interest as legatee. Several years after the execution of this will, it appears that Mr. Hopkins made a declaration of trust, dated the 26th of July, 1865, which is as follows:

"The State of Alabama,
"Macon County.

"Know all men by these presents, that, whereas "I, Arthur F. Hopkins, of the city of Mobile, State of "Alabama, am the owner of certain real estate in the city "of Chicago, State of Illinois, consisting of thirty-seven "acres, more or less, which said real estate was conveyed "to me in the year and date as appears in said conveyance, "and for divers good and valuable considerations, as "therein also appears: now, I do by these presents, hereby "acknowledge and declare that one-fourth of the said "consideration or purchase money paid by me for said "real estate, was the money or property of Maria Walker, "of the city of Mobile, State of Alabama; and one-fourth, "also, of the said consideration or purchase money, was "the money of John J. Walker, of the city of Mobile, "Alabama; and I do hereby acknowledge and declare "that I have ever held, and do now hold, one-half of all "my said real estate in the said city of Chicago, in trust

"for the said Maria Walker and John J. Walker, one-
"fourth of the same to each.

"In testimony whereof I have hereunto set my hand
"and seal this the 26th day of July, A.D. 1865.

"ARTHUR F. HOPKINS. [SEAL.]"

There is, perhaps, no doubt that Mr. Hopkins intended by this instrument to declare a trust in favor of Mr. and Mrs. Walker in the lands now in controversy; but the declaration does not, in terms, apply to them. The lands in controversy are not situated in the city of Chicago. But the intention seems so manifest, that the defendants did not deny, that by virtue of this declaration of trust, Mr. and Mrs. Walker became each equitably entitled to a one-fourth interest in the property. This declaration of trust, however, was never recorded in Illinois, nor was any knowledge or information respecting it communicated to Mr. Derby or his attorney, until long after he had purchased the property and received the executor's deed. (See testimony of Monroe and Derby, pp. 274 and 275, Pr. Rec.) Mr. Walker says that when he came to Chicago to sell the lands, he consulted Mr. Kerfoot as to the propriety of recording it, but the latter advised him that it was not necessary or essential to any interest. (Pr. Rec., p. 141.)

As before stated, Mr. Hopkins died on the 8th of November, 1865. Letters testamentary were granted on the 6th of February, 1866, to John J. Walker and Wm. G. Jones, who were named as executors in the will. Mr. Jones appears never to have acted in the trust, and on the 6th of February, 1867, he tendered his resignation, which was ordered to be received and filed in the Probate Court.

Mr. Walker remained the sole executor, and in the latter part of February, 1867, went to Chicago for the purpose of selling the property there belonging to the estate. His reasons for wishing to dispose of the property at that time he gives as follows:

"The property of the estate of A. F. Hopkins, when I qualified as executor, consisted chiefly of real estate in Mobile, and the unimproved land in Cook county, Illinois, just outside the limits of the city of Chicago. In the winter of 1867 it became necessary to raise a considerable amount of money to pay certain debts against the estate, which could no longer be postponed. The only way to raise the money was by a sale of property. The improved property in Mobile was yielding good rents, and the parties interested, and the friends of the family, whom I consulted, all agreed that as executor it was my duty to sell the unimproved land near Chicago, rather than the real estate in Mobile. Accordingly, in the latter part of February, 1867, I went to Chicago for that express purpose."

5. The time selected by Mr. Walker for putting this land upon the market, it scarcely need be said, was the most inopportune he could possibly have chosen in the whole year. It was at the beginning of March, before the rigors of winter had abated. Navigation had been suspended for three months. Business of every kind is then comparatively sluggish, and the real estate market especially inactive. It appears that the weather was such, while Mr. Walker was at Chicago, that he went but once to look at the property, and although invited by his agents to visit it again, he replied that he "*would scarcely drive there in that weather for the land.*" The premises were situated, as we have seen, beyond the southern limits of

the city, and consisted at that time of open and unimproved prairie. They lay at a distance of more than four miles from what was then the business portion of Chicago. Much of the land was low, and about half of the 20-acre tract west of State street, is described by the witnesses as a slough. A large portion of blocks 4 and 5, east of State street, was of the same character. There were not more than two or three small houses anywhere in that vicinity. Mr. Pryor describes the property accurately in his testimony, when he says it was then "a wild prairie." The streets now leading directly from the city to these lands had not then been extended through. There was a race course or trotting park of sixty acres lying directly between them and the improved portion of the city, which, Mr. Pryor says, "was a flat bar to anything like progress" in this property. (See Pryor's testimony, pp. 171 and 172 of Pr. Rec.) It appears further that a railway track had then been extended across these lands, connecting the Chicago Cattle Yards with the railroads along the lake shore. The right of way for this purpose had been obtained by condemnation in 1865. It appears (Pr. Rec. 76) that a little more than an acre and a half of Mr. Hopkins' land had been thus appropriated, for which, and the damages caused to the residue of his property, he had been awarded the sum of $1000. (See abstract of title, p. 279 of Pr. Rec.) This reduced the quantity of the land owned by him, from 31¼ to 29¾ acres; and the whole of it was rendered considerably less desirable for residence purposes, in consequence of its proximity to such a railroad. It also deserves notice in

this connection, that 10 acres of the 29¾ acres consisted of an undivided interest in a larger tract, which belonged to the legal representatives of Mr. Hopkins and other owners, as tenants in common. This portion of the property is also represented by all the witnesses, as being of much less value per acre than the residue. Mr. Pryor says the land west of State street was "worth much less than the lands that lay east." (Pr. Rec. 169 and 170). Mr. Averill, also one of the complainants' witnesses, says the land east of State street was worth in 1867, double that lying west, and that there was the same difference when he gave his testimony. (Pr. Rec. 245). Mr. Stone, another of the plaintiffs' witnesses, says the land west of State street "was not near as salable as that east at that time, in fact it was hard to sell property in there." (Pr. Rec. 239). Mr. Picket says, "I should think that east of State street was worth from two to three times as much as that west of State street; that would be my judgment about it; certainly twice." (Pr. Rec. 257). Mr. Cleaver says there was no sale at all for the land lying west of State street; part of the tract was a slough; the high ground would be worth five or six hundred dollars an acre, but there was nothing selling in that part of the town. (Pr. Rec. 253).

It further appears from the testimony of nearly all the resident witnesses, that there was no established price for land in that vicinity in March, 1867; it had no fixed value; it was not required for immediate wants, and there was no ready sale for it. There was a large quantity of land in the market, and there were more sellers than

buyers. (See testimony of Averill, p. 246; Lombard, p. 248; Picket, p. 256; Harvey, p. 263; Wallace, pp. 266 and 267; and Winston, p. 270 of Pr. Rec.)

6. Having now described the character and situation of this property, and given the court a general idea of the condition of the real-estate market on the first of March, 1867, we will now proceed to state, as concisely as possible, what was done by Mr. Walker and his agents, after he arrived at Chicago, towards effecting a sale. The evidence on this subject—aside from that contained in the defendants' answers—consists principally of the testimony of Mr. Walker and Martin Andrews, and of a certain letter annexed to and made a part of the bill of complaint, which Mr. Kerfoot wrote to Walker on or about the 29th of February, 1868. This letter was in reply to a note from Walker, dated the 24th of the same month, in which he states (Pr. Rec., 70), that it had been recently intimated to him, that at the time the sale was made to Derby, he (Kerfoot) had received an offer of $200 an acre more from another party, and furthermore that he was a joint purchaser with Derby. Mr. Kerfoot's reply, though dated the 29th of February, seems not to have been completed and sent off until the 14th of March. Mr. Walker, feeling uneasy in consequence of not receiving an immediate answer to his note, made up his mind to go to Chicago and investigate the matter personally. He arrived there within a day or two after Mr. Kerfoot's letter had been mailed, and on presenting himself at Kerfoot's office, stated to him, that having received no reply to his note of the 24th of February, he had come there to hear his

explanation. Mr. Kerfoot informed him, that his answer had been forwarded a day or two previously and must have passed him on the way; that he had commenced writing it on the 29th of February, but the great length of it and other engagements had prevented its completion before the 14th of March, the day it was mailed. Mr. Kerfoot then explained to him verbally, as Walker says, how it happened that he had become interested in the property, and showed him a copy of the letter he had written, which Mr. Walker read over before leaving the office. This letter contains a long and detailed account of what took place between Mr. Walker and his agents, in relation to the sale of this property the year previous; and Mr. Walker must have known whether that account was true. The result was, that Walker became, as he says, fully convinced that Kerfoot had not really perpetrated a fraud on him. He afterwards talked with Mr. Derby, and finally returned home fully satisfied that he had not been defrauded in the sale of the property. (See Walker's testimony, pp. 142, 143 of Pr. Rec.) With this explanation, the letter referred to will probably be considered tolerably satisfactory evidence of what is there said to have occurred between Walker and his agents. It is alleged in the bill of complaint itself, that Mr. Walker, for some time afterwards, believed the letter to be true (Pr. Rec., 50); and if *he* had no fault to find with the recital it contains, of those facts which were within his own knowledge, we may safely assume that recital to be true.

To proceed then with our statement, it appears that Mr. Walker arrived at Chicago on or about the first of March,

1867, and that he went there for the express purpose of selling the property. On arriving there, he called to see Mr. Kerfoot at his office, and was informed by his partner, Mr. Pierson, that he was absent from the city, but would be back in two or three days. He made known to Mr. Pierson the object of his visit, and when asked if he had fixed any price upon the property, replied that he had not, as he had no knowledge of its value beyond what Mr. Kerfoot had written him on the 31st of August previous, it having then been said to be worth $1,000, or perhaps $1,200 an acre. [For this letter see Pr. Rec. p. 78.] Mr. Kerfoot, it would seem, was then at Springfield, attending to some business before the legislature; and, according to Mr. Andrews' testimony, some days elapsed before his return. Very soon, and probably the next morning after Mr. Walker's arrival, Mr. Pierson, knowing that this Mr. Andrews had previously purchased a piece of land east of and adjoining the northerly part of Pryor and Hopkins' subdivision, and had expressed during the winter, some desire to buy a portion of that property, sent him a card informing him that these lands were then for sale, and requesting him to call at their office. Mr. Andrews went over to the office and had a conversation with Mr. Pierson alone, in the course of which Mr. Pierson informed him, that the party who had the property for sale had come from Mobile, and was there for the purpose of selling it; and as he had been talking about buying, they proposed to give him the first opportunity of purchasing it. Pierson further told him that the gentleman had not yet seen the property, and he would not be able to name the terms and

price until he had. Some days elapsed while Mr. Walker was waiting, in the course of which Andrews had several conversations with Mr. Pierson, in relation to what the property was worth and the price that would probably be fixed upon it. Pierson intimated that they would advise *not far from a thousand dollars an acre*, although he would not undertake to say positively, and could not, until they had consulted; but that was his general view of the price that would be named. About this time Andrews was called away by a telegram to Ohio, and on the morning of the day he left, which was the fourth of March, called at Mr. Kerfoot's office to ascertain, as he says, whether they were yet able to name a price. It was there he first saw Mr. Kerfoot after Walker's arrival. Andrews' account of this interview, given nearly three years afterwards, is substantially this: They told him that Mr. Walker had not yet been down to see the property, but they expected *to take him down that day*; and they could not name the price until they had seen it. Mr. Kerfoot asked him if he would make an offer for the property; and Andrews says he did make an offer of one thousand dollars an acre for that portion *lying east of State street*. He objected to buying the undivided half of the 20 acres west of State street, but said he would give a thousand dollars an acre for the residue. Andrews then told Mr. Kerfoot, as he says, that he was about to leave for Ohio, and gave him his address, where he could telegraph him if Mr. Walker should accept his offer, and if not, let him know the price at which he would sell. He also told Mr. Kerfoot that he expected to interest a cousin of his in the pur-

chase, *and Mr. Kerfoot thereupon proposed, in order that they might have complete understanding of it, to make out a map of the property on oil paper, which he could take with him.* He called again and took the map before leaving. Mr. Andrews subsequently explains that the terms of his offer, were either one-fourth, or $10,000 cash, he don't recollect which, and the balance in one, two and three years.

Mr. Kerfoot's account of this interview, in his letter to Mr. Walker, written in March, 1868, is as follows:

"But the only person besides Derby, who intimated to us "any willingness to purchase, was a Mr. Martin Andrews, "who had purchased some property east of yours and on the "margin of the grove. He came into the office and said "he was going away that afternoon to Ohio. I wanted "him to meet you. He declined because he had no time, "and was not prepared to speak definitely then of it. He "said these things: 1st. He would not purchase that part "west of State street at all. I told him you wanted to sell all. "2d. He would pay only quarter cash, and the balance in "three equal annual payments, with six per cent. interest. "I told him you wanted cash. 3d. He would not pay "more than $1,000 per acre, even for the portion east of "State street, for he had purchased not over a year before "much better property at $500 per acre. 4th. And all "this depended on whether his brother-in-law would be "able and willing to raise the quarter cash, when he "reached Ohio. The negotiations with Mr. Andrews "were just of this kind, and no more definite. *I remem-* "*ber distinctly of telling you of his talk*, but neither you nor "I deemed the matter of any moment, *for we then had no* "*idea of selling on time.* We asked all cash. Derby's pro- "posals and counter proposals alone brought about the "terms finally agreed upon, and when you did accede to "the proposal of his which was accepted, or he to yours, "I do not know which, it was done so that I scarcely "knew it until it was done, and you at once proposed that "the bargain be reduced to writing. It was then and

"there done, March 6th. How long Mr. Andrews was "gone I do not know. Some time after you left he "returned, and in conversation regarding the land, we told "him that the property was sold. He complained some- "what, and said that he had asked Mr. Pierson 'to write "'him before the property was sold.' Now, if he did ask "anything of the kind, we do not remember, but you can "see how advisable it would have been from the induce- "ments his indefinite talk gave us, and how perfectly pos- "sible it would have been to have stepped in when you "and Derby had concluded your long negotiations, and "have said, 'Hold on till we write to Ohio and see if Mr. "'Andrews will not give this price or a better one, and on "'these terms or better ones.' This is the whole and abso- "lutely the unvarnished history of Mr. Andrews' negotia- "tions touching the thing. I dwell upon it, *as he was "the only person who talked at all of buying*, and this may "be the basis of the $200 per acre more idea." (Pr. Rec., 72.)

This letter, as before stated, is annexed to and made a part of the bill of complaint; and is therein alleged to be untrue in two particulars, which are specified: first, in stating that S. H. Kerfoot & Co. never had an offer of $200 per acre more for the property than Walker received from Derby; and second, in stating that they had no interest in the purchase. Kerfoot and Pierson, in their answer, say in reply to this averment, that those statements, and each and every statement made in the letter, were and are true. So far, then, as there is any conflict between the representations contained in this letter and the testimony of Mr. Andrews, the letter, having been written only a year after the occurrence to which it relates, while Mr. Andrews' testimony was given nearly three years after, and being, moreover, sustained by the oaths of two witnesses, should be regarded as the better evidence. It

must at least be conceded, considering the difficulty of remembering and repeating a transient conversation with entire accuracy, three years after it occurred, and the frequent mistakes and disagreements which happen, from one party's not having clearly expressed his own meaning in such a conversation, or its being misunderstood by the other, that there is no satisfactory reason to believe, that Kerfoot & Co. were paltering with Mr. Andrews, or had any desire to prevent him from competing with others for the purchase of the property. The testimony given by Andrews himself excludes this supposition. The fact, that he was apparently the first person, who was apprised that the property was in the market, the suggestions made by Mr. Pierson, before Kerfoot's return, in relation to the price, ($1,000 an acre), and the trouble taken by Mr. Kerfoot to prepare the map, to enable Andrews to explain to his relative the situation of the land, are all clearly irreconcilable with the notion, that Kerfoot & Co. had formed any scheme to sell the premises to somebody else for less than their value, or felt any desire to thwart Andrews' intention, if such he had, of becoming a purchaser. It appears, besides, that the conversation with Andrews was communicated to Mr. Walker at the time. This fact is distinctly stated in the letter; and Mr. Walker, who came to Chicago in March, 1868, for the express purpose of investigating this very matter, accepted the statements in the letter as a complete vindication of his agents' conduct. He does not now undertake to deny the truth of this statement, but says simply, in effect, that if he did hear of any offer made by Andrews, it made no

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impression on him. That it made no impression, is very probable; for Mr. Kerfoot also says, that neither Walker nor himself deemed the matter of any moment, *as they then had no idea of selling on time.* That Mr. Derby knew of any proposition made by Andrews, or is in any way implicated in concealing it from Walker, is not pretended; at least, there is not a particle of evidence tending to prove it. The delay in carrying out the trade, and the disinclination, it is said he manifested, to consummate the purchase, which will be hereafter noticed, are strong indications that he felt no anxiety about competing offers, made or to be made, for the purchase of the property.

7. The next matter to be noticed in the progress of the affair, and perhaps the most important of all, is what took place between Walker and Mr. Kerfoot after the latter's return from Springfield. It does not appear on what day Mr. Kerfoot got back. He was expected home in two or three days, when Walker first called on Mr. Pierson, which he says was about the first of March; and according to Mr. Andrews, several days elapsed while Walker was waiting for him. He is shown to have been in Chicago on the morning of the 4th of March, and they had not yet been down to examine the property, but were going down that day. It is not probable, therefore, that Kerfoot had any interview with Mr. Walker before the evening of the third, or the forenoon of the fourth of March. At their first interview, Mr. Walker says he explained to him the situation of the estate and its necessities; and he gives the following account of the conversation that ensued:

"He (Kerfoot) said it was necessary to fix a price for the property, and asked me if I had fixed a price for which I would sell. I told him I had not, but that I hoped and expected to get at least $1,200 to $1,500 an acre, as he had written to me in August, 1866; that it was then worth $1000, and perhaps $1,200 per acre. He replied, that it was not possible — the time was not propitious for selling outside property. It was dull — not in demand, and there had been no movement in it since August, 1866. On this representation, *we both agreed that we could, in all likelihood, do better by waiting, if that were practicable.* I then told him that I was compelled to have at least $10,000 in money, but that if I could borrow that amount on the property, I could then postpone selling to a later period. He answered promptly that there was no chance to raise money on vacant property, as the times were very tight, and no negotiations of that kind were then practicable."

Mr. Walker does not say that anything further occurred at this interview; though there is perhaps a perceptible willingness indicated on his part to have it understood, that what he next narrates also took place at that time. His language is:

"This left me no choice but to sell. It was then agreed, if not at our first interview, certainly *at a very early stage of the proceedings*, that the property should be sold for $1000 per acre, that being in his opinion the maximum price at which it could be sold; and he said he knew but one man in the city whom he thought would likely buy the property. He supposed he might sell it to him, because he knew that he wanted south-side property; and that he had, or would soon have, a large amount of money arising from a recent sale of his residence in the city. That man, he told me, was the defendant, W. M. Derby, to whom I was soon introduced by him; and then commenced the negotiations which finally terminated in the sale of the property."

He afterwards adds, "I soon found Derby to be what Kerfoot had described him to me, a shrewd and exacting trader; but having the fullest confidence in Kerfoot, and trusting entirely to his skill and judgment, I did not fear being overreached by Derby."

Such is the exceedingly condensed account given by Mr. Walker, of what took place between Mr. Kerfoot and himself, before the commencement of his negotiations with Derby. The impression derived from the perusal of his testimony is, that nearly everything was arranged at the very first interview, including even the mention of Mr. Derby as the only probable purchaser. But Mr. Walker, besides his failure to indicate with sufficient distinctness, what occurred at one interview, and what at another, has wholly omitted several important particulars. He certainly went down, for instance, with Mr. Kerfoot to look at the land; and he went down there, too, "at a very early stage of the proceedings;" before, in fact, any price was fixed upon the property, or it was even definitely determined how it should be offered for sale, or whether it should be sold at all. Mr. Derby's name was not mentioned, nor does he appear even to have been thought of as a possible purchaser, until after these preliminaries were settled. To supply these deficiencies in Mr. Walker's testimony, it becomes again necessary to refer to the letter Mr. Kerfoot wrote him about the first of March, 1868. This letter professes to give a "history of the whole transaction;" and Mr. Walker must have known, when he first saw it, whether the following explicit statements it contains were true or false. Had he known them to be

untrue, the letter, instead of allaying the suspicions which had been excited by his concealed correspondent, would have served only to confirm them. If they were in any respect inaccurate, he would surely have said so when he gave his testimony. But he has done nothing of the kind; he has practically admitted the truth of every one of them, and they are entitled to the same credence as if he had done so in express terms. The evidence referred to consists of the following extract from that letter:

"You came here in February, 1867, and make known "your desire to sell the property for cash. You and we "thought of no other terms. Your only object in selling "was to realize money, with which to save and protect "some Mobile property. You and I drove down and saw "the land. You remember the day and the weather. It "was a comparatively mild day, and yet we were both "terribly chilled. We examined the slough land west of "State street, of which you controlled ten acres. We saw "the south-west block of yours, south of the cattle track, "and farthest from the avenues, with regard to which Mr. "Pryor afterwards said, when he saw it with me, when "he was out, 'By George! if I had known that was in it, "I would never have bought the 80 acres,' and yet that "block went to Judge Hopkins in the partition, and was "part of the land sold to Derby. We could not drive "straight over; we went round by the other block, when "you said, 'Let us go home, or we will freeze." We came "home; we talked the matter over. I told you not to sell, "if you could help it; at least to keep the land till the "grass could be green on it. You remember, I told you "outside property was dull; cash customers were scarce, "and I could not advise a sale at that time. You said in "answer, that 'the question was simply between keeping "this unproductive property and losing the productive "property at Mobile, or the converse of the proposal.' I "told you 'that was a matter with regard to which you "alone, and not I, at all, could judge,' but, 'I knew that "any sale then, and, especially one for cash, would be dif-

"ficult.' You will remember that this whole ground was "gone over thoroughly; you then ordered, by my advice, "the abstract. You desired to know the status of the "property, sale or no sale. While this was being made, "the weather was intensely cold. You staid in the hotel "very closely. I proposed that we should again drive to "the land, and take another look at it. You replied to "the effect that you would scarcely drive there, in that "weather, for the land. If so with you, how much more "difficult to have got purchasers to have driven there. "The result of our various talks concerning and digestings "of the matter was: 1st. That it should be sold. 2nd. "That we should ask $1,000 per acre. 3rd. That the "whole should be sold together, not separating the desira- "ble portion east of State street, from the undesirable "part, (the undivided half of twenty acres, much of it "slough,) west of State street. 4th. That as money alone "was your object, we should require cash. These things "being determined on, we began to talk of a customer, "likely to have the money and willing to purchase. Derby "was the only one I thought of. I mentioned his name "to you, and told you I knew he had just sold a place for "$45,000, and that he could probably handle it, if he was "disposed to do so. I prepared you for the man; I told "you what kind of a trader he was. You know that I "met promptly, all the time of our trading, his specious "pleas, and once or twice you and I came very near con- "cluding that we would not trade with him. I think I "was more indignant than you at his games, and I imag- "ine that your subsequent intercourse with him, proved "the correctness and necessity of my warnings to you "regarding him. You will also remember that, on the "day you signed the deed, I had quite a warm time with "him, and only brought him to terms by telling him "'that if he pressed his last rude point of your being iden- "tified as the John J. Walker, the executor, etc., I would "break up the trade, and he should not have the property.' "You remember we both came to the conclusion that he "wanted to back out of the trade as regarded the prop- "erty west of State street, etc., and I said he should take "all or none. You feared, at one time, he would not buy, "and, I think, would have come to his idea, unless I had

"insisted on his taking all. I knew that to take the east "of State street away from the west of it, would take the "cream away. *When your mind is led back by these remem-* "*brances to the transaction, does it look to you as if I acted* "*like one being a part purchaser with Derby?* I endeavored "to have you not sell; to keep the land till spring, and "when you determined to sell, I got the only man I knew "of that had the money and was willing to buy, and dur- "ing the long tedious trade I thwarted him at every point, "and did my utmost to meet his plans. *Does it seem* "*probable—does it seem possible, that I had an interest in the* "*purchase from you?*" (Pr. Rec. 73, 74.)

We have seen what answer Mr. Walker himself gave, in March, 1868, to the question put to him at the close of this extract. When his recollection was recalled to the facts and circumstances there detailed, he became, as he says in his testimony, "morally convinced that he had not been defrauded in the sale of the property." It is difficult to conceive, if the foregoing statements be true, how he could have arrived at a different conclusion. It appears, in the first place, that Mr. Kerfoot, instead of advising him to make a sale of this property at the time he did, advised directly the contrary. He pointed out to Mr. Walker, at their earliest interview, as the latter testifies, that it was an unfavorable time for selling outside lands—that the market was dull, the lands not in demand, and he could do better by waiting. He repeated this advice after they had been down to see the property, telling him plainly that cash customers were scarce, and he had better hold the land at least until spring, when the grass should be green upon it. But Mr. Walker did not yield to this counsel. He was determined to sell for what he could get; and he made up his mind to sell, if he could, for cash.

When this was decided, it became necessary to name a price, and upon consultation with Mr. Kerfoot, this was fixed at $1,000 an acre for the whole tract, not separating the more desirable portion east of State street from the residue. That this was the maximum price the land could be reasonably expected to sell for on those terms, there can be no question. The evidence upon this point will be hereafter noticed. After these preliminaries had been settled, they began to talk of a customer, and Mr. Kerfoot mentioned Derby as the only one he could think of, who would be likely to have the money and be willing to purchase. Mr. Kerfoot says in his letter, he told Walker what kind of a trader Derby was; and Mr. Walker says, in his testimony, that he found him to be what Kerfoot had described him, "a shrewd and exacting trader." It is not material in this connection to inquire into Mr. Derby's qualities as a business man; but if he was supposed to be what these gentlemen describe him, it is a fact of some significance, that Kerfoot should have taken the precaution to forewarn Walker, against the danger of being "overreached" by him. This precaution on the part of Kerfoot, is not easily reconciled with the notion of anything like preconcert between him and Derby. In fact, the two things are plainly inconsistent, and there is no rational way of putting the case, so as to make them harmonize. The other circumstances referred to in the letter, by which Mr. Walker was reminded of the vigilance shown by Kerfoot, while the trade was pending, to guard his interests, and the reluctance manifested by Derby to carry out the contract, are additional evidences of an

equally suggestive character, to repel the supposition that Kerfoot was then conspiring with Derby to get the better of his principal. Mr. Walker, who was familiar with all these incidents, and could judge far better than we what significance properly attaches to them, felt their force when his attention was recalled to the facts; and the effect they had upon his mind is another pregnant circumstance which forces itself upon our consideration in weighing this evidence.

8. There is another fact of considerable importance, to which attention may as well be called here, perhaps, as at any other stage of the argument. It appears from the testimony, that Kerfoot and Pierson were not the only persons with whom Walker consulted in regard to the value of this property. He had conversations respecting real-estate matters with Mr. Gage, the proprietor of the hotel where he lodged; and also with Martin Andrews, who boarded at the same house. This is the same Mr. Andrews, whose testimony has been before referred to. He met Mr. Walker at the hotel, and conversed with him "about Chicago property" for two or three hours. (Pr. Rec., 154, 155.) It would have been a most remarkable circumstance, if Walker had not tried to elicit in these conversations, some information respecting the market value of his land. Andrews professes to have had some knowledge on that subject, but whether he communicated his views to Mr. Walker, he does not directly state. It is, however, affirmatively proved, that Walker did have a conversation with one extensive operator in real estate, in relation to the value of this very property. Mr.

Winston says, that Walker came to his office, before the sale was made to Derby, and conversed with him on that subject. (Pr. Rec., 269, 270.) He is not able to state the precise conversation, but he informs us what his opinion was at that time in regard to this land, and his testimony leaves it not doubtful, that he expressed that opinion to Mr. Walker. He considered the property unsalable. Its value, he says, was based wholly upon calculations looking into the future, and it was impossible then to foresee whether there would soon be any active demand for land in that vicinity.

9. We have now brought the history of this transaction down to the commencement of Mr. Walker's negotiations with Derby. Mr. Walker gives no account of what occurred between that time and the closing of the bargain on the 6th of March; on which day, he says, a memorandum agreement was signed by Derby and himself, "by which Derby agreed to buy the property for $25,600, payable $8,200 cash, and the balance in one, two and three years, with interest at six per cent., on delivery of a deed conveying him a clear title to the premises, which agreement was left in the hands of Kerfoot & Co., until an abstract of title could be made out and a conveyance perfected." The only evidence of what took place between Walker and Derby, prior to the completion of the bargain, is that contained in the defendants' answers. Their statements having been in no way contradicted, it will be proper, in the absence of all other evidence on the subject, to refer to them for the requisite information. Mr. Derby says, (and in this he is fully corroborated by Kerfoot and

Pierson), that he was requested by Mr. Kerfoot to go with him and see Mr. Walker personally; and that Mr. Walker told him at their first interview, that he had come to Chicago for the express purpose of selling the premises in question; that Walker then solicited an offer for the lands, which he excused himself from making, until he had seen them and advised himself as to their value. After he had examined the property, he had a second interview with Mr. Walker, on the 6th of March, at Kerfoot & Co.'s office, when he then offered to buy the lands, at the price of $25,600, payable one-fourth cash, and the balance in three equal installments to become due in one, two, and three years respectively, with six per cent. interest. Mr. Walker refused this offer; but finally consented to accept that price, if Derby would make the cash payment $8,200, instead of $6,400, as he had proposed. Mr. Derby assented to this modification of the terms, and thereupon at Mr. Walker's request, the agreement was reduced to writing and signed by both parties. (Pr. Rec., 115, 116.) The complainants have put the agreement in evidence, and it is in these words (Pr. Rec., 146,):

"For value received, John J. Walker, of Mobile, Ala-
"bama, as executor of the estate of Arthur F. Hopkins,
"deceased, hereby agrees to sell to William M. Derby, of
"Chicago, who, for value received, hereby agrees to buy
"of said Walker, as such executor, the property of said
"estate, lying in section three (3) and four (4) of township
"thirty-eight (38), north of range fourteen, east of 3'
"P. M., being the east half of blocks one (1) and six (6),
"and the whole of blocks four (4) and five (5), and lots
"one (1), two (2), twenty-three (23) and twenty-four (24)
"of block twelve (12), all in Pryor and Hopkins' subdi-
"vision of the west half of the northwest quarter of sec-

"tion three (3) of said township and range; and also an "undivided half of twenty acres, *owned jointly by said* "*estate* and one Akerly, lying in the northeast corner of "said section four (4), township and range aforesaid. The "price of said property being ($25,600) twenty-five thou- "sand six hundred dollars, payable, eight thousand two "hundred dollars *on delivery of a good and sufficient deed,* "*conveying said premises to said Derby, free and clear of all* "*encumbrances*, and the balance in three (3) equal annual "payments, with interest thereon at six (6) per cent. per "annum from date hereof; the notes for said deferred pay- "ments to be secured by mortgage of said Derby, with "power of sale therein contained, duly executed, and cov- "ering the premises now sold: all the papers dated even "with this.

"Witness the hands and seals of the said parties hereto, "this sixth (6) day of March, A. D. 1867.

5c. rev. stamp

"JOHN J. WALKER, [SEAL.]
"Executor, &c.
"WM. M. DERBY." [SEAL.]

10. After the agreement was concluded, Mr. Walker procured his abstracts of title; one of which—that relating to the lands lying in Pryor and Hopkins' subdivision—has been put in evidence, and will be found on pages 274 to 280 of the printed record. It appears from this abstract, that the title to all the lands in that subdivision, which were embraced in the sale to Derby, was vested in Arthur F. Hopkins at the time of his decease. The subsequent proceedings between Mr. Walker and Mr. Derby are narrated by Mr. Walker as follows:

"When the abstract of title was finished, it was submitted to Mr. Monroe, the counsel of Derby, who pronounced the chain of title perfect, with the exception of one or two unimportant links from some previous grantors, which Kerfoot said he could easily remedy, as he was familiar with the facts, and the parties who could furnish

the missing links (merely formal papers) were then in the city. This he, Kerfoot, did do to the satisfaction of Mr. Monroe, but by that time Derby professed to be dissatisfied with the purchase, and insisted that I should leave out the undivided half of the ten-acre parcel, urging various objections, and showing, as I thought, a disposition to back out of the trade. This alarmed me, because I thought I was making a good sale, and I believed what Kerfoot told me, that Derby was the only chance to sell the property. I told Kerfoot my fears of Derby's intentions. He said he would go and see him, and shortly afterwards came back, and said he had told him distinctly that he should take all the property or none. After that, Derby finally raised the objection as to my identity, which was communicated to me, I think, by Mr. Monroe, at his office. I went immediately and told Kerfoot of this objection, whereupon he seemed to be very indignant, and said he would go at once to Derby's office to see him about it. He returned in a few minutes, saying he had spoken very sharply to Derby about raising such an objection, and had told him that unless he withdrew it he would break up the whole trade, and he should not have the property at all. Shortly afterwards, Mr. Monroe came to Kerfoot's office, and said that he had laughed Derby out of his objection to my identity, but that Derby now required, that in addition to my deed as executor, I should furnish him a deed from myself and wife, and the other legatees under the will. I am not positive whether this new condition was first proposed by Mr. Monroe, or by Derby himself, but at all events, I was told by one or both of them, that all objections should be withdrawn, if I would agree to furnish the supplemental deed. I said at once, that I would do so, and that the deed might be pre-prepared in any form they might desire. It was thereupon agreed that I should execute my deed as executor, that Derby should pay me the cash payment $8,200 on the delivery of that deed, and that his notes for the balance, $17,400, at one, two and three years, with interest at six per cent., together with his trust deed or mortgage, should be deposited in the hands of S. H. Kerfoot & Co., to be given up to me when I delivered the supplemental deed aforesaid. My impression is that the supplemental

deed was prepared by Mr. Monroe, but I am not positive as to that. The form of it was, however, approved, and pronounced satisfactory to Derby. All the papers, in accordance with the agreement, were then drawn up and executed; my deed, as executor, was dated, I think, on the 16th and delivered on the 19th of March, 1867. I received from Derby the cash payment, $8,200. His notes and mortgage, or trust deed, were deposited with Kerfoot & Co. The supplemental deed was handed to me. I paid Kerfoot & Co. their commissions, $715, for selling the property, and left Chicago for Mobile on the 20th of March. * * Some time elapsed before I could procure the execution of the supplemental deed, as I had to send it to France, where some of the legatees then were. I received it back in the latter part of May, 1867, and immediately took it with me to Chicago. On arriving there I presented the deed to Kerfoot, but I do not remember whether he or I showed it to Derby and Monroe, but it was examined and accepted as properly executed. I did not take the notes and mortgage or trust deed immediately out of the hands of Kerfoot & Co., because Derby had told me when I left in March, that he thought when I came back with the supplemental deed that he would be able to cash all his notes. So I left the papers in the hands of Kerfoot & Co., and commenced negotiations with Derby for cashing the notes. The result of this negotiation was, that he paid me $10,000 in cash, and for the balance I took from him a piece of vacant property on the west side of the city. I paid for this property an exorbitant price, for Kerfoot and others advised me, and Derby himself admitted, that what I allowed for it was much more than it was then worth. But I wanted the $10,000 badly, and I took the property on the opinion expressed by Kerfoot, Derby and others, that by the time Derby's last notes became due in March, 1870, the property would, in all probability, be worth fully, and perhaps more, than the price then Derby demanded of me for it. [This prediction appears to have been verified within less than a year. See Pr. Rec., p. 72.] So the trade was made, Derby received his notes and the supplemental deed. I received the $10,000 in money, and the deed for the west-side property, and thus finally perfected and closed the

sale of the estate property to Derby. This was done about the 1st of June, 1867." [Pr. Rec. 139, 140.]

The executors' deed made by Mr. Walker, is set forth on pages 4 and 5 of the printed record. It purports to be an absolute grant of the land itself, in fee simple. It is executed by Mr. Walker as the executor of the last will and testament of Arthur F. Hopkins, and he professes to make the conveyance "by virtue of the power and authority to him given by said last will and testament." The consideration mentioned is $25,600, and it contains covenants of special warranty.

The confirmatory deed is set out on pages 6 and 7 of the printed record. It bears even date with the executor's deed, March 16th, 1867, and purports to be executed by the surviving heirs of Arthur F. Hopkins. It is a deed of release and quit claim, and contains the following clause: "The sole purpose and object of this quit claim, being to sanction and confirm the sale of said hereinbefore described premises, this day made to said Derby by said John J. Walker, as executor of the last will and testament of said Arthur F. Hopkins, and to sanction and make valid the deed of said premises, made by said Walker as such executor to said Derby." The consideration stated is $5.

The two trust deeds made by Derby to secure the deferred payments, are not set forth at length in the record; but an abstract of their contents is given in one of the exhibits annexed to the bill, [Pr. Rec., p. 80], by which it appears they were both dated the 16th of March, 1867, and filed for record on the 19th of the same month.

11. To sum up the evidence, it appears, in the first place, that Mr. Derby's negotiations for the purchase of the property were conducted with Mr. Walker personally. The bargain was made with him, and not with his agents, and it was completed and reduced to writing at their *second interview*. There is no evidence, that Walker either asked or received any advice from Kerfoot & Co., about accepting the price that Derby offered. He acted, so far as the proof shows, on his own judgment. He had previously sought and obtained information from Winston, and perhaps others, in regard to the market value of the property, and Kerfoot had told him what price he thought it ought to bring. But Kerfoot's advice to him was, not to put it in the market before spring. When Walker persisted in forcing a sale, Kerfoot brought him and Derby together, and left them to make their own bargain; not, however, without previously advising Walker, as it appears, that Derby was a "shrewd and exacting trader." The contract was executed by both parties on the 6th of March. It was signed by Mr. Walker in his representative capacity, but it was a contract for the sale of the entire estate, and provided for the payment of the purchase money, on the delivery of a good and sufficient deed, conveying the premises to Derby free from all incumbrances. Thirteen days were allowed to pass, before the contract was carried into execution, by the delivery of the executor's deed; and this delay appears to have been entirely voluntary on the part of Derby. During this interval Mr. Walker remained at Chicago, where the defendants well knew he would have daily opportunities to ascertain, from

a hundred sources, whether he had been deluded by the advice of his agents, in regard to the value of the property. Not only was there no haste manifested by Derby to consummate the trade, but he became dissatisfied with the bargain, and persisted in the attempt to induce Walker to consent to a modification. Finding Walker would not yield, he sought to protract still further the execution of the contract, by raising the offensive objection that he had not been properly identified. Is it credible that Derby would have acted in this manner, had it been really true, as the plaintiffs allege, that the contract of March 6th was the fruit of a corrupt conspiracy between him and Walker's agents, to get the lands for less than their value?

12. But there is another fact disclosed by the testimony, which deserves some notice in this connection. It appears that the bargain had hardly been closed with Walker, before Derby was trying to persuade another person to join him in the purchase. This important fact is testified to by Mr. John S. Wallace. Mr. Wallace states (Pr. Rec., 265), that Derby came to him at that time, and said he was closing, or had closed, a bargain for this property. After pointing out the several parcels, he told Mr. Wallace that the price he was to pay, taking the tract through, was about $800 an acre. He then asked for Mr. Wallace's opinion in regard to the trade, and wanted him to take an interest in the purchase. That this was after the contract had been made with Walker, appears clearly from the price Derby said he was to pay. The whole tract, including the portion taken for the railroad, was roughly estimated to contain about 32 acres, and 32 acres at $800 an acre

would amount to $25,600, the exact sum offered by Derby and accepted by Walker on the 6th of March. Before that time, no mention had been made of any less price than $1,000 an acre. Mr. Wallace, who then owned two tracts not far distant from the lands in question, and who was thoroughly acquainted with the real-estate transactions in that quarter, did not consider the investment desirable, and accordingly declined to embark in it. The fact here shown is important in a double aspect. For it is not only highly improbable that Derby would have been trying to find another party to join him in the purchase, if Kerfoot & Co. had already bargained for a half interest; but this testimony also shows, that Derby then felt some misgivings in regard to the safety of his adventure, and that the price he had agreed to pay was, in the opinion of a most capable and experienced judge of such matters, all the property was then worth. Mr. Wallace says he considered it "a rather wild investment," and for this reason, although he had from $50,000 to $75,000 lying idle in bank, declined to have anything to do with it.

13. It is, however, alleged in the complainants' bill, that the price for which this property was sold to Derby, was grossly inadequate; and this alleged fact was one of the circumstances principally relied upon at the outset, to establish the charge of collusion between him and their agents. Most of the plaintiffs' testimony is directed to the question of value, and it will be necessary to examine it. The tract contained in all, as we have seen, 31¼ acres; but one acre and a-half had been condemned and occupied by the railroad company, thus leaving only 29¾ acres, includ-

ing the streets, really embraced in Derby's purchase. The price agreed upon was $25,600, or something over $860 an acre. The bargain was made, however, by Mr. Walker himself; and there is no evidence that he was ever advised by his agents, that the property was worth less than the valuation they first put upon it, namely, $1,000 an acre. The real question we have now to consider, is, therefore, not whether the land was sold for its full value, but whether the evidence shows Walker to have been so misled by the advice Kerfoot & Co. actually gave him, as to raise the presumption of bad faith on their part. In discussing this question, the complainants' counsel will probably lay great stress upon the fact, that there was an extraordinary rise in the value of these lands, within 12 or 18 months after the sale, and that Derby sold them at a large advance. But it is manifest that this is a circumstance wholly foreign to the present inquiry. It is not a sufficient cause for rescinding a sale, that the property subsequently rose in market value; nor can any presumption of bad faith be indulged against agents, who follow the express instructions of their principal, because the owner might have got more for his property, if he had withheld it longer from the market. This point is well put in the following pertinent passages taken from the opinion read in this case by Mr. Justice Blodgett: "So far as the present price of this property, and its rise in value or price after the sale, are concerned, they are circumstances which can have, and should have, no weight with the court. It is a part of the history of this city, and the court cannot close its eyes to the fact, that there were extraordinary rises in real estate in and

about the city, between the first of March, 1867, and October, 1868, and it is undoubtedly true that this property partook of that advance, so as to increase five-fold, if not more, in the interval. But the main question really is, was this property sold for less than its market value, at the time of the transaction between Walker and Derby, and was it so sold at the corrupt instance of Kerfoot and Pierson? * * If you are to disturb real-estate transactions of this city, because of unprecedented and unparalleled advances in price immediately after the sale, there is hardly a title here, that could withstand the test of a judicial investigation."

It is unnecessary to refer here to the special circumstances, which led to the sudden and rapid advance of this and other outside property about Chicago, in the summer and fall of 1867. The evidence abundantly proves that no one forsaw it in March previous. It is not pretended by the complainants themselves, that the lands in question were then worth over $1,200 an acre; for this is the valuation put upon them in the bill of complaint. (Pr. Rec., 52.) Mr. ANDREWS, one of their principal witnesses, testifies that the parcels east of State street, were worth at that time, in his judgment, $1,200 an acre, but the 10 acres west of that street were not so valuable. (Pr. Rec., 155.) Mr. CLARK says they were worth, taking the whole together, about $1,000 an acre; and it appears from the testimony of this witness, that the ten acres of this tract lying west of State street, were on the market and offered to him at $800 an acre, after the sale was made to Derby. Mr. AVERILL'S valuation is $1,200; but he remem-

bers no sales of property in that vicinity made at that time, and he says there was not much demand for lands in that locality. (Pr. Rec., 246.) Mr. SMITH disclaims having had any knowledge of their value, but hazards the following conjecture: "In my opinion, from the best information I have on the subject, I should think this land, taken all together, at that time might have been worth in the neighborhood of from $1,200 to $1,500 per acre." (Pr. Rec., 243.) Mr. PRYOR does not profess to have had at that time any knowledge of its market value. He mentions certain offers he had, for portions of his own lands in Pryor and Hopkins' subdivision, about that time, but there is no evidence that these offers came from responsible parties, or that they were made in good faith. A sale actually made by this witness of fourteen acres and upwards, lying in the northerly part of that subdivision, a month and a-half later than Walker's sale of the 6th of March, and a subsequent offer he made to sell the residue of what he owned there, are something more to the purpose, and will be noticed presently. But it is a striking fact, that no one of the plaintiffs' witnesses pretends, that these lands had in March, 1867, any fixed market value. As Mr. Averill says, (Pr. Rec., 246,) there had been no sales in the vicinity, to establish anything like a regulated price. The adjacent lands were all unimproved, and none of them were required for actual use. They had only a speculative or prospective value, and it was then impossible to determine whether there would soon be any stimulated demand for them. Mr. Pryor, as we have just stated, speaks of one or two offers he had, about that

time, for some of his lands in that subdivision; but the following additional facts are disclosed by the testimony of this witness. It appears that he went out to Chicago on the first of April, 1867, and remained there some three weeks. After gaining all the information he could respecting the value of his property, by visiting most of the real-estate offices in the city, he concluded a sale on the 19th of April, of the west half of blocks one and six, the whole of block two, and a little more than an acre in the south-east corner of block three—about 14½ acres in all—to this same Wm. M. Derby. The price was nominally, $20,000, or $1,395 an acre; but he took in part payment, a lot in the city, at the nominal price of $8,500, which he afterwards sold for $6,750, or $1,750 less than he allowed for it. After deducting this loss, the commissions, and other expenses, it appears that the price actually realized by him did not exceed $1,200 an acre. A full account of this trade will be found in Mr. Kerfoot's letter to Mr. Walker, of the 29th of February, 1868, [Pr. Rec., 75], which Mr. Pryor says in his testimony, is substantially accurate. [Pr. Rec. 167]. Mr. Pryor also says that these lands had a fine surface, and "were worth a great deal more than any other land in the subdivision." He considered them much more valuable than the lands purchased by Derby from Mr. Walker. [Pr. Rec. 168.] It will be seen by an inspection of the plat on the 71st page of the printed record, that these Pryor lands all lay, with the exception of the west half of block six, north of the railroad track. Three of the parcels fronted on Michigan Avenue, which, although it had then only been laid out

to a point about a mile north of this subdivision, was yet expected to be extended through to it eventually, and to become, as it afterwards turned out, the leading thoroughfare in that quarter. MR. PICKET, another witness, says of these lands, that they were much more favorably situated than the Walker property, and were at that time as well worth 14 or 15 hundred dollars an acre, as the Walker property was seven to nine hundred an acre. The difference at the time his deposition was taken, March 20th, 1870, he thought was still greater. [Pr. Rec. 258.] It appears further, from the testimony of Mr. Pryor, that he had no sooner closed this sale to Mr. Derby, than he offered to sell him the residue of his property in the same subdivision,—some 18¾ acres—for $25,000, or at the rate of about $1,333 an acre, [Pr. Rec. 171.] Mr. Derby declined to take it at that price, and Mr. Pryor returned to New York without effecting any further sale. This transaction with Mr. Pryor was on the 19th of April, some six weeks after the contract had been signed between Derby and Walker, when the approach of the warm season had given a fresh impetus to the demand for outside property.

The defendants have introduced upon this question of value, the testimony of six witnesses, all of them intelligent and well-known citizens of Chicago, and probably as thoroughly informed in relation to the matters concerning which they were interrogated, as any gentlemen to be found in that city. Reference has already been made to the testimony of MR. WALLACE. His attention was called by Derby to the purchase, at the time; and he was invited to take an interest in the property at the price Derby had agreed to pay.

He did not consider the investment an advantageous one, and, therefore, declined Mr. Derby's overtures. Mr. Wallace testifies that there was a large quantity of land then for sale in that vicinity, and it had no fixed price. He had, himself, sold in the autumn of 1866, 10 acres lying about half a mile south-east of this subdivision, at $400 an acre, and then had 10 acres left. He also owned another larger tract, about a quarter of a mile west. As an illustration of the extraordinary rise that happened afterwards in the value of this outside property, he mentions the fact, that in the fall of 1869, he sold the 10 acres adjoining the piece he had disposed of at $400 an acre in the autumn of 1866, for the sum of $100,000. MR. LOMBARD testifies, that on the 9th of January, 1867, he purchased 40 acres lying half a mile south of Pryor and Hopkins' subdivision, at less than $400 an acre; and he was offering it for sale in March at $600 an acre, but could find no purchaser. This land, he says, was worth more than that portion of the Walker tract, which lay west of State street. He says further, that there was a large amount of property for sale in that neighborhood, and none of it could be said to have any fixed value. Mr. Lombard had some conversation with Pryor, when he was at Chicago in April, 1867, about purchasing one of his blocks in Pryor and Hopkins' subdivision, bounded by Michigan and Wabash avenues. He had previously been told by a real-estate broker, that it could be bought at $1,000 an acre, but he concluded he would not give that for it, as it was a time when nobody knew whether land was going up or down there. MR. CLEAVER testifies, that there was no sale for lands in that

vicinity in March, 1867. He thinks the Walker property was worth from $700 to $900 an acre, but nothing was selling in that part of the town. A short time before the sale to Derby, he purchased from Governor Wells, a tract of 40 acres lying only two blocks south of Pryor and Hopkins' subdivision, a part of it timber, and considered, as he says, the prettiest tract near there, at $400 an acre, on time. He sold 10 acres of it afterwards at $600 an acre. MR. PICKET testifies, that this land could hardly be said to have a marketable value in March, 1867; prices were altogether speculative; there was no purpose for which the land was wanted; and if the owner was anxious to sell, and could get from seven to nine hundred dollars an acre, he would get all it was worth. MR. HARVEY testifies, that he was a real-estate broker, and tried in the spring of 1867, to sell for Mr. Pryor a portion of his property in this subdivision. The best offer he could get was $1,200 an acre for that part lying north of the railroad track. He also says, the land had no determinate value, and that it is now hard to realize the condition of all that land south of the city at that time. He purchased large tracts near there in the autumn of 1866, for the Rock Island Railroad Company, and had got it at his own prices. MR. WINSTON testifies, that Mr. Walker called upon him, before he had made his sale to Derby, and that they conversed about the value of his property. Mr. Winston says: "The property at that time I considered unsalable; what it was worth would have to be based upon calculations looking into the future, which I was not able to make myself. I had bought before that, and held the title in my name, although I did not

own the ground, a 57-acre tract very near there, extending over from State street to the Pittsburgh and Fort Wayne road, at $400 an acre, cash. I had also bought for myself ground below there, in the vicinity of the Rock Island shops, quite a large amount of it for me, at $250 to $300 an acre. Subsequently, however, and in the fall of 1867, about that time, the land began to appreciate quite rapidly, and I sold out all my interest in the vicinity of the shops, and having made something on it, I desired to reinvest, and concluded to reinvest in that vicinity. I was somewhat of a pioneer in that speculation, down in that vicinity, although afterwards a great many other men went in and made a great deal more money than I did, because I sold too soon." He then states that in October, 1867, he bought 34 acres, which were part of an eighty-acre tract lying next south of Pryor and Hopkins' subdivision, at $1,500 an acre. The same ground had been offered a month or six weeks earlier, he says, at $1000 an acre.

Such is the character of the testimony taken in this case, in relation to the marketable value of the premises in question in the month of March, 1867. Does the evidence prove, or has it the slightest tendency to prove, that Kerfoot & Co. practiced any deception upon Mr. Walker in the advice they gave him? It appears from the testimony of Mr. Andrews, that $1000 an acre was the valuation put upon the property by Mr. Pierson, before Mr. Kerfoot's return from Springfield. It can not be pretended that Pierson was then conspiring with any one to delude his principal; for his object at that time was to make a sale, if he could,

to Mr. Andrews. It is evident that this price was not satisfactory to Andrews, for he pretends to have offered $1000 an acre for a part of the tract only, — that portion which the witnesses call the cream of the property. When Mr. Kerfoot returned, he advised Walker, at their first interview, that the market was dull — the time not propitious for selling outside property, and that he could do better by waiting. When Walker decided he would sell, the price fixed upon the whole tract was $1000 an acre — the terms cash. After examining the lands, and advising fully with his agents, and, as it now appears, after having conferred with Mr. Winston on the same subject, and had a three-hours' conversation with Andrews himself at the Sherman House, "about Chicago property," he was introduced to Mr. Derby, and they were left to make their own bargain. "Derby's proposals and counter proposals," — so says Mr. Kerfoot, in his letter to Walker of the 29th of February, 1868, — "alone brought about the terms finally agreed upon, and when you did accede to the proposal of his which was accepted, or he to yours, I do not know which, it was done so that I scarcely knew it till it was done, and you at once proposed that the bargain be reduced to writing." After the bargain had been thus concluded, Mr. Walker remained two weeks in Chicago, stopping at the principal hotel, where he must have seen, and conversed daily with persons more or less familiar with real-estate speculations in and about the city; and yet the only anxiety he felt during the interval, in regard to the sale he had made, was, as he himself confesses, lest Derby should back out of his bargain and refuse to take

the property. About the first of June afterwards, Mr. Walker returned to Chicago, bringing with him the confirmatory deed. How long a stay he made does not appear; but he remained long enough to close another real-estate transaction with Mr. Derby, and, therefore, long enough to have ascertained the fact, if he had been deceived and imposed upon by the advice of his agents in March previous. He had received in the meantime, it appears, a letter from Mr. Pryor, written from New York in the latter part of March, expressing some surprise at the sale he had made, and so had an additional incentive to look into the matter, and satisfy himself whether he had really made an injudicious sale. But he saw nothing, and he heard nothing, to excite any distrust of the fidelity of his agents, or, so far as appears, any regret even, that he had parted with his property at the price he received for it. If, in view of these facts and circumstances, it is possible to draw from the evidence of those witnesses who have testified in regard to value, any indication of bad faith on the part of Kerfoot & Co. in their dealings with Mr. Walker, we must be permitted to say, that we have wholly failed to appreciate their testimony. It is true the plaintiffs have produced two witnesses, who say they would have given more for the property than Kerfoot & Co. thought it would then sell for. One of these witnesses is Mr. Averill, a real-estate broker and rival of Mr. Kerfoot in business, and the other is Martin Andrews. There is an old adage, that it is easy to be wise after the event; and the inquiry here becomes a pertinent one, why did not these two gentlemen, if they were really so eager to purchase as the

plaintiffs would have us believe, not seek out some other investment for their money in that vicinity? The evidence informs us, that most of the land around there was in the market, and that it could have been bought at rates quite as favorable to the purchaser as the price Derby paid to Walker. Yet neither of them bought an acre! Is it an unreasonable presumption, in view of this fact, that these witnesses, when it came to paying out their money, would probably have shown somewhat less alacrity to take the property at the price they mention, than they now manifest in giving in their testimony? But suppose they would have been willing to buy, and to have paid 25 to 50 per cent. more than they could have bought other lands for, of equal value, in the same vicinity—how does that affect the question? There still remains the further inquiry—did Kerfoot & Co. know this, or have any reason to believe it? and if so, did they fraudulently withhold the information from Mr. Walker, at the instance of the defendant Derby? So far as Averill is concerned, there is no pretense that he made any offer, or was even thought of as a possible purchaser. It appears he knew the land was in the market, but he did not take the trouble even to ask the price. Andrews says *he* offered $1,000 an acre for a portion of the property, but declined to make any proposition for the ten acres west of State street. It was not till he had reached Ohio, and conferred with his relative, that he professes to have changed his mind, and when he had changed it, he did nothing to remove the impression he had left upon Mr. Kerfoot. His offer, such as it was, was disclosed to Mr. Walker. Kerfoot and Pierson so testify,

and Mr. Walker does not deny it. When this gentleman went to Chicago in March, 1868, to inquire into the charges preferred by his unknown correspondent against Mr. Kerfoot, it is impossible to believe, that he was not then fully informed of all the facts within Mr. Andrews' knowledge, touching the pretended offer he had made for the property. He also received, at the same time, Mr. Kerfoot's explanations on the same subject. Those explanations he then considered entirely satisfactory, and it was not until February, 1869, when what he is pleased to call "further developments," had been made by the secret instigator of this prosecution, that he imagined there was the slightest reason to suspect the fidelity of his agents.

14. This review of the facts and circumstances connected with the transaction in question, has now been brought down to the delivery of the executor's deed to Mr. Derby, on the 19th of March, 1867. By that conveyance Derby acquired a complete and indefeasible title to the property. The subsequent confirmatory deed was not essential to the passing of the title, and appears to have been suggested only at the last moment; and then, more for the purpose of quieting the objection raised by Derby to Walker's identity, than for any other reason. The sole object of the deed was to ratify and confirm the sale made by the executor, and thus supply, in the most direct mode, the legal evidence of Walker's authority to execute the previous conveyance. At the time the executor's deed was delivered, Mr. Derby made the cash payment of $8,200 to Mr. Walker, according to the terms of the contract of the 6th of March. His notes for the deferred payments were also executed and

placed in the hands of Messrs. Kerfoot & Co., to be passed over to Mr. Walker upon the delivery of the confirmatory deed. On the same day, the trust deeds to secure the notes were filed for record; and Mr. Walker settled with his agents, and paid them their commissions and disbursements. After that, Kerfoot & Co. rendered him no further service, and neither asked nor received any additional compensation. So far as Mr. Derby knew, or had any reason to believe, their agency had then terminated. They had then completed the business which they had undertaken, and performed all the duties which the law would imply from the terms or nature of their engagement. They had found a purchaser, and a sale had been in fact concluded on the 6th of March. On the 19th, the contract of the 6th of March remained no longer executory, but had been carried into complete execution by the delivery of the executor's deed and the payment of the purchase money. After their agency had thus terminated, Kerfoot and Pierson were as free as other persons to deal in this property. Mr. Derby might lawfully have employed them as his agents to make a sale for himself, and there would have been no impropriety in their rendering him such a service. They were equally at liberty to buy the property themselves; and they did subsequently bargain with Derby for an undivided half of it. The memorandum of their agreement, drawn up at the time the bargain was made, bears date the 19th of March; but all three of the defendants testify, that the bargain was really made some days after March 19th, and that the paper was ante-dated. The circumstances under which the trade was made, have been

fully stated in the defendants' answers, and no fact has been proved in the case which contradicts their statements. Their account of the transaction is not only consistent with all the facts proved, but is in itself probable, and it is supported by the collateral circumstances. Kerfoot and Pierson had advised Mr. Walker that the property was then worth $1,000 an acre, and if he would hold it two or three months longer it would sell for more than that. Derby, however, had bought it at some $860 an acre. That they should have been willing to take an undivided half, at the price he had agreed to pay, was certainly not unnatural. Mr. Derby, on the other hand, had made rather a hasty venture. He had acted without much opportunity for deliberation; and the evidence shows, that it was not long after he had concluded the bargain, before he applied to Mr. Wallace, with whom, it appears, he had been previously engaged in one or two real-estate operations, to take an interest in his purchase. Mr. Wallace did not look upon the speculation with any favor; and after that, we find Derby evincing a decided inclination, as Mr. Walker says, to back out of the trade: Under those circumstances, and after having tried ineffectually, as he says he did, to sell the property at $1,000 an acre, that he should be content to admit Kerfoot and Pierson, or any other real-estate dealer, to a share in his adventure, whom he thought able to render effectual assistance, in case he should need it, in putting the property upon the market, is also perfectly intelligible.

15. We proceed next to consider the evidence relating to the conduct of the parties, subsequent to the making of this

executory contract. It is alleged in the bill of complaint, and Mr. Walker testifies, that no information of Mr. Kerfoot's having acquired an interest in the property, was communicated to him by either of the parties, until March, 1868. But there is no evidence that they did anything to cover up or conceal their interest. On the contrary, the complainants themselves expressly aver in their amended bill, "that from the making of said agreement, uninterruptedly and continuously, until the fifth day of September, 1868, the said Samuel H. Kerfoot and J. Ford Pierson held out, pretended and claimed to be the true and lawful owners of the undivided one-half of all said real estate, [Pr. Rec. p. 49]; and no fact has been proved in the case, which conflicts with this statement. The neglect of the defendants to expose the transaction to Mr. Walker, did him no injury; nor does it furnish any indication of perjury or bad faith on their part. They were under no obligation to disclose it; and in refraining from doing so, they acted as business men generally would have been likely to act under the same circumstances. The fact that they had made this trade, however, was no secret; and when Mr. Walker called upon Mr. Kerfoot for information, in March, 1868, all the particulars of the transaction were unreservedly communicated. He also called at that time upon Mr. Derby, and talked with him about it. There was then a controversy, it appears, between the parties, as to whether Kerfoot and Pierson had fulfilled their part of the contract; but neither party appears to have shown any hesitation in answering Walker's inquiries, and he became satisfied, after hearing their respective statements,

that there was no ground to question the fairness of the transaction.

16. It appears from the contract made by Derby with Kerfoot and Pierson, that the vendees had until the first of September, 1867, to make the cash payment of $4,100. It appears also, that they had agreed to pay Derby $375, in addition to the other payments specified in the contract. It was claimed by Derby, that they had not complied with the terms of the agreement; and he accordingly refused, when called upon by Kerfoot and Pierson shortly before the first of September, 1867, to make them a conveyance. Kerfoot and Pierson then caused the contract to be recorded, and Mr. Pierson also filed for record his affidavit, which is set forth on the 69th page of the printed record. It can not be contended that this affidavit tends in the slightest degree to discredit his answer, and it will not be necessary, therefore, to refer particularly to what is there stated. Afterwards, and on or about the first of August, 1868, Derby agreed to convey to Samuel Wing one of the blocks in Pryor and Hopkins' subdivision, which he had purchased from Walker, for the sum of $30,000. About the same time, he also made a sale to Alonzo Rawson of block six, the east half of block five, and the 10 acres lying west of State street. But neither of those parties would accept the title, or pay for the property, until Derby had procured a quit claim deed from Kerfoot and Pierson. Derby then found it necessary to enter into negotiations with those gentlemen for a settlement; and on the 5th of September, 1868, obtained their quit claim deed, by paying them $7000 in cash, and

conveying to one Joseph B. Shepard for their benefit, the west half of block five in Pryor and Hopkins' subdivision. [Pr. Rec. pp. 128, 109, 81, 83.]

17. An unsuccessful attempt was made by the complainants, to show that Mr. Derby was constrained to make this settlement, in consequence of certain steps taken by Kerfoot and Pierson to enforce their rights under the contract. As these are the "further developments" referred to by Mr. Walker, it is proper to notice them. There is annexed as an exhibit to the amended bill of complaint, a pretended copy of a bill in chancery, which Kerfoot and Pierson are alleged to have had prepared by their solicitor, with a view to obtain from Derby a specific performance of the aforesaid contract. The only evidence in the case showing that such a bill was ever drawn, is that found in Kerfoot and Pierson's answer. Derby disclaims having had any knowledge of it. Kerfoot and Pierson say they did cause a bill to be prepared, which was in substance the same as that set forth in the exhibit, and that it was submitted to them by the solicitor for revision and correction. But they say further, that the bill was never filed or even revised by them, for the reason that a settlement was made with Derby in the manner above stated. [Pr. Rec. pp. 104, 107, 111, 126.] It is not proposed to examine here the particular averments made in that bill. If it had been actually signed and filed by Kerfoot and Pierson, it could not be received as legal evidence in this cause against either of the defendants, to prove any fact alleged or denied therein. The general rule is, that a bill in chancery, like a pleading at common law, is not to be

treated as a positive affirmation of the facts therein stated, but only as a statement of the plaintiff's case by his solicitor, to be admitted or denied by the opposite party. It is not, therefore, receivable in evidence in another cause, against the party in whose name it was filed, as an admission of the truth of the facts therein alleged; but it is only admissible to prove that a suit was instituted and the subject matter of it.

Boileau v. *Rutlin*, 2 Exch., 665.

An exception is made to the rule, where the bill has been sworn to; but in that case, it can be received only as the admission of the party who made oath to it. In the present case it appears, not only that the bill in question was not sworn to, but that it was never filed, or even signed by the parties. They had, in fact, never adopted it. There is no purpose for which this bill, under these circumstances, can be nsed as evidence. So far as the defendant Derby is concerned, it is clear no consideration can possibly be given to it. It was prepared in antagonism to his interests; and there is no evidence that he ever saw it, or had the slightest knowledge that an adversary proceeding of that character was intended to be commenced against him. The original draught of the bill, moreover, has never been produced, and the supposed copy set forth in the exhibit forms no part of the evidence read at the hearing of the cause in the court below. If treated as evidence, it could be used only to show that Kerfoot and Pierson had authorized statements to be made in it, which do not agree in all respects with what they now say in their answer. But it is manifest that very little

reliance ought to be placed upon such evidence, to discredit their present positive assertions made under oath.

18. One or two further attempts to contradict Mr. Kerfoot upon certain collateral points, require, perhaps, to be briefly noticed. It is alleged in the amended bill, that the defendant Kerfoot "was the agent of the said Arthur F. Hopkins during his life-time, touching said property, and had charge thereof as such agent." Mr. Kerfoot, in his answer, denies this statement, and alleges that he did not know, until the 31st of August, 1866, what lands belonged to Mr. Hopkins' estate, and that Mr. Pryor, for whom alone he had always acted touching said lands, then gave him the intelligence which enabled him to answer the letter previously received from Mr. Walker, asking for information respecting the value of the property. With a view to contradict Mr. Kerfoot, an exemplified copy was procured and filed in the case, of a certain power of attorney executed by Mr. Hopkins and Mr. Pryor on the 2nd day of June, 1855, authorizing James H. Rees and Samuel H. Kerfoot, or either of them, to cause their land to be subdivided and platted, and to acknowledge and file for record, a map of said subdivision; also to make sales of the property and execute contracts with the purchasers. [Pr. Rec., p. 130]. With this power of attorney there was also filed in the case, an instrument of revocation, dated the 4th of December, 1860, in which it is recited, that Rees and Kerfoot had sold no part of the property. [Pr. Rec., p. 131.] It was sought to prove by Mr. Pryor, that when the property was subdivided in 1856, Mr. Kerfoot acknowledged the plat, as attorney in fact for

Mr. Hopkins; but Mr. Pryor qualified his statement, by saying that he *believed* this was the fact, but was not certain about it. [Pr. Rec., p. 179.] A glance at the abstract of title on page 278 of the printed record, will show how completely mistaken Mr. Pryor was in his recollection; for it there appears that the plat was acknowledged by Mr. Pryor himself, as attorney in fact for Mr. Hopkins, instead of by Mr. Kerfoot. The instrument of revocation shows, that no sales were ever made, either by Rees or Kerfoot, under the power; and the abstract of title proves, that neither of them ever did anything else under it. It appears further from the testimony of Mr. Pryor, that *he* had the management of the entire property from the time Mr. Hopkins became interested in it, down to the time of his decease. He employed Mr. Kerfoot to pay the taxes upon it, and that was all the agency Kerfoot appears to have had in relation to the property, Mr. Hopkins remitted the money for his share of the taxes to Mr. Pryor, and Pryor paid all the taxes through Mr. Kerfoot. [Pr. Rec., p. 180.] That Mr. Kerfoot did not even know the description of the property belonging to Mr. Hopkins' estate, until the 31st of August, 1866, is conclusively shown by the letter of that date, found on the 78th page of the printed record.

19. It was also sought by the testimony of Mr. Pryor, to contradict certain statements made in Kerfoot's letter to Mr. Walker of the 11th of March, 1867. (Pr. Rec., 79.) Walker had written Kerfoot to the effect that he had received a letter from Pryor, expressing his surprise at the sale he had made. Kerfoot wrote Walker in reply, that

Pryor was at Chicago when his letter arrived, and that they had been down together to look at the land;—that when Pryor's attention was called to the swamp land on both sides of State street, he exclaimed, "By George, if I had known that was so bad, I would never have purchased it. Judge Hopkins and I divided without reference to the swamp;"—and, "Mr. Pryor, on examination, agrees with me, that under the circumstances, taking the swamp, the undivided interest, the fact that ten acres lie west of State street, etc.,—under all these circumstances, and the sale being to one purchaser in bulk, you did well." Mr. Pryor's deposition was taken on the 10th of March, 1870, —nearly three years after the conversation referred to in Kerfoot's letter; and when his attention was recalled to the matter, he said he did not remember distinctly what conversation he had with Kerfoot: "Mr. Kerfoot said to me a good deal about it, but I really don't remember now anything special that was said." When asked, whether he remembered going down with Kerfoot to see the land about that time, his reply was: "I can hardly say I do. I understand Mr. Kerfoot says I rode down with him. His statement to that effect creates an impression in my mind that I did—apart from that statement, I couldn't say; I don't recollect; I am not prepared to say it wasn't so; I think it is probable." When asked further, if he remembered saying to Kerfoot at that time, that if he had known the land was so bad, he would never have purchased it, his reply was: "I think I couldn't have made such a statement, because I didn't regret at the time that I bought the lands; still I don't say I didn't make such a

statement; that is a point that I am not prepared to state positively about." (Pr. Rec. pp. 166, 167.) With reference to the opinion he was said by Kerfoot to have expressed about Mr. Walker's sale, Mr. Pryor says he has no recollection of making such a statement, and thinks he could not have done so. When asked, what his opinion was, at that time, respecting the value of the ten acres lying west of State street, his answer was: "I have no idea"; and again when inquired of, how that parcel compared in value with the land east of State street, he said in reply: "I have no idea how they stood comparatively in the market at that time. I had been here but once in six years; more than six years; and I had no interest in the west-side lands whatever." (Pr. Rec., p. 202.) Now when it is considered how extremely vague and imperfect is the recollection of Mr. Pryor, and how improbable it is, that Kerfoot would have ventured in a letter to Walker, to misrepresent the opinion of a person, with whom the latter was then in correspondence, it can hardly be said that this attempted contradiction of Mr. Kerfoot has proved a success. That Pryor made use of the expressions attributed to him, and left upon Kerfoot's mind the impression that he was satisfied with the sale, cannot reasonably be doubted.

20. With this notice of the two or three futile attempts made to contradict Mr. Kerfoot, our review of the evidence in this cause is at length concluded. It is possible some points may be suggested by the opposing counsel, which have not occurred to us; but the material facts bearing upon the question to be adjudicated, are believed to have been fully and fairly stated. That question we under-

stand to be this: Have the complainants proved by any legal and satisfactory evidence, that Kerfoot and Pierson were secretly interested in the purchase, which Mr. Derby made from John J. Walker? The defendant Derby, for whom we appear, has answered under oath positively denying, that they, or either of them, had any interest in that purchase. His testimony is fully corroborated by the sworn answer of his co-defendants; and there is no witness who testifies, that a single material statement made by him is untrue. The collateral facts and circumstances shown in evidence have been examined, and nothing appears in the acts or conduct of either of the parties, from the beginning to the end of this transaction with Mr. Walker, to indicate that he has told anything but the exact truth. Charges of fraud and perjury brought against men occupying respectable positions in society, and who have hitherto maintained a reputable character, are not ordinarily sustained by courts of justice without some reliable and decisive proof. We respectfully submit, that there is no such proof in this case, and that the decree of the court below dismissing the complainants' bill, ought, therefore, to be affirmed.

21. Before closing this argument, some notice should perhaps be taken of a point, which has been heretofore, and may be again, urged in behalf of the plaintiffs, to the effect, that though no fraud in fact has been proved, yet the contract of sale between Derby and Messrs. Kerfoot and Pierson was constructively fraudulent, because made before the delivery of the confirmatory deed. It may be said, that the contract of March 6th, entered into by

Walker as executor, though a contract, in terms, for the sale and conveyance of the whole estate, bound but an undivided half of the land, and that the deed executed by him on the 16th of March, conveyed only a beneficial interest in so much, since by virtue of the declaration of trust made by Mr. Hopkins on the 26th of July, 1865, Walker was, in his own right, the equitable owner of an undivided fourth of the property, and his wife the equitable owner of a like interest. This equitable title of Walker and his wife, it may be said, did not pass to Derby until the delivery of the confirmatory deed on the first of June; and it may be insisted, that inasmuch as Kerfoot & Co. were employed "to sell said real estate for the complainants," they were disabled from acquiring an interest in the property, until the sale to Derby was finally consummated by the delivery of that deed.

To this, if the point were otherwise well taken, it is sufficient for the purposes of this case to say, that the only persons who would have the right to complain of Kerfoot & Co.'s purchase from Derby, are Walker and his wife. The beneficial interest of the other legatees, is admitted to have been bound by the contract of the 6th of March, and to have passed by the executor's deed. Kerfoot & Co.'s agency for them, manifestly continued no longer, and they were free to deal in so much of the property as had thus completely vested in Derby. Now a careful examination of the contract between Derby and Kerfoot & Co., shows that Derby sold, and they purchased and were to have a quit claim for "one-half of the property purchased of John J. Walker, the executor," etc. The contract does not

cover any interest but that acquired by Derby from Walker, the executor. The complainants say, that Walker's contract with Derby and the executor's deed, bound only an undivided half of the land, and that a further deed was necessary to invest Derby with a complete title to the residue. If this were so, the contract between Derby and Kerfoot & Co. does not purport to sell such after acquired interest; and the contract ought not to be extended by implication, so as to make the purchase constructively fraudulent.

But in addition to this, it appears that the bill in this cause is filed in behalf, not only of Walker and his wife, (the only parties aggrieved,) but of all the other legatees; and since those who join as complainants in a suit in equity, must establish a common or joint right to the relief sought, it is plain, that if the suit fails as to a portion of the complainants, it must fail as to all. At least, a decree dismissing the bill for such cause, would not be reversed for error.

But the point is not well taken for other reasons. It is assumed that Kerfoot & Co.'s agency for Walker and his wife, continued until the delivery of the confirmatory deed. This, however, is a radical mistake. What was the agency of Kerfoot and Pierson, and when did it terminate? It is alleged in the bill, that, Walker *as the agent of the complainants*, and as executor of the Hopkins' estate, employed Kerfoot and Pierson "to sell said real estate for complainants." From the evidence it appears, that they were simply agents to find a purchaser, and to advise

Walker about fixing the price and terms of sale. Walker was present to receive the advice, to accept or reject it, and to conclude a contract, if he thought best. While this relation of an advisory character existed, the agents could not secretly bargain through others for an interest in the purchase. But after a sale had been made, and their advisory relation had terminated, they were at liberty to bargain with the purchaser for an interest. There could then be no conflict between their interest as purchasers, and the duty they owed to their employer. When, therefore, Walker signed the contract with Derby on the 6th of March, it might well be insisted, there was a complete extinguishment of the duty and agency undertaken by Kerfoot and Pierson. They had found a purchaser, and a contract had been made for the sale and conveyance of the whole property. Can it be said that their duty still continued to advise Walker about the price, the terms of sale, or the propriety of selling? Was it their duty to find another purchaser? or advise Walker not to abide by the contract he had made? How could Walker and his wife complain, that they were constructively defrauded by any purchase Kerfoot and Pierson might afterwards make from the vendee? Clearly not at all, unless it was a part of the employment of Kerfoot & Co. to aid Walker to disown and violate his contract.

Kearney v. *Taylor*, 15 How., 494, 522.
Wortman v. *Skinner*, 12 N. J., Ch. 358.

It further appears, that although Walker and his wife

are admitted to have been the equitable owners of one-half of the property, in their own right, yet this fact was not known to Derby at the time of his purchase; and his answer does not admit that he then knew it. The evidence shows that he bought by the record, and that an abstract of title was furnished by Walker, showing that he had power as executor to sell and convey the whole. The declaration of trust, by virtue of which he and his wife now claim to have been the equitable owners of an undivided half, was purposely withheld from record; and the reason for withholding it, is sufficiently evident. His wife was then in France, where, it appears, she acknowledged the confirmatory deed, on the second day of May, 1867. He wished to make a quick sale, in order to raise money to meet certain pressing liabilities of the estate, which, he says, could no longer be postponed. Had he recorded the declaration of trust, his wife's deed would have been necessary to pass a perfect title; and this would have involved a delay in completing the sale and getting his money, which he was anxious to avoid. He recorded Mr. Hopkins' will, but the other instrument was kept out of sight. Both Derby and his attorney testify, that they had no knowledge of it. And this would be evident without their testimony;—for it is impossible to believe, that Derby would have paid over the money to Walker, without requiring from him, at the time, a conveyance of his equitable interest, had that interest been disclosed. Nor is this all. The confirmatory deed itself, shows upon its face, that no such disclosure could have been made. It is a deed of confirmation merely, and does not purport

to convey any separate interest of Walker or his wife. No attorney could have drawn or advised such a deed, had he been informed that they were equitable owners of one-half of the property. In addition to this, it is shown, that both in the contract of March 6th, and in the executor's deed of March 16th, the land is represented by Walker to be the property of the estate; and he there claims for himself full power, as executor, to sell and convey it. Derby then had the right to suppose that Walker, as executor, could sell and convey good title to the premises; and after the purchase was made, the sale to him could not be affected, by his agreeing to sell to those, who, before the contract, had acted as Walker's agents. No duty which those agents may then have constructively owed to Walker and his wife, by reason of an agency which was unknown to Derby, could imperil his purchase, because of a sale of a part to them before the secret agency had expired. A purchase by the agents under such circumstances, could not affect the party from whom they bought, so as to taint his purchase with a constructive fraud, or make him constructively a trustee.

Geddings v. *Eastman*, 5 Paige, 561.

The facts of this case, however, show, that both the direct and constructive agency of Kerfoot and Pierson had fully terminated, when they bargained with Derby for an interest in the property.

C. McKnight
Counsel for Appellee

14 Pet 439
4 S v Wood —
2 Bark 199
23 How 479
1 ~~12~~ How 127
33 Bark 594

SUPREME COURT OF THE UNITED STATES

December Term, A. D. 1871.

JOHN J. WALKER ET AL.
vs.
WILLIAM M. DERBY ET AL.
} *In Equity.*

Argument for the Defendants,

KERFOOT AND PIERSON.

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55 Pen 275
13 Gov. 207
12 Ark 563
16 Md 456

Supreme Court of the United States.

DECEMBER TERM, A.D. 1871.

JOHN J. WALKER ET AL.
vs.
WM. M. DERBY ET AL.

In the printed argument filed in this cause in behalf of Mr. Derby, most of the questions applicable to the defendants, Messrs. Kerfoot and Pierson, are fully and fairly discussed. It is there proved, not only that the main charge relied upon by the couplainants has no foundation in the facts of the case, but also that all the facts and circumstances taken together conclusively prove the negative of that charge.

We shall, therefore, very briefly notice such parts of the testimony, not fully discussed in that argument, as seem to bear particularly upon the conduct of Messrs. Kerfoot and Pierson in the transactions complained of.

The complainants attached to their bill, and made a part of it, a certain letter written by S. H. Kerfoot to John J. Walker, under date of Feb. 29, 1868.

By so doing, they adopt and make evidence against them every part of that letter, except what they allege is not true.

This letter is set out in transcript of record, on pages 72 to 77, and gives a detailed history of the action of Messrs. Kerfoot & Pierson, and a full statement of all the facts and circumstances attending the sale of the property in question, by John J. Walker, executor to Mr. Derby. The court is asked carefully to read this letter. As a whole, it disproves the entire case of the complainants, and we might narrow this discussion down to the two statements contained in it, complained of and alleged not to be true. These are: "1st. We never had any offer "whatever of $200 per acre, or any more than you received "for the land of the Hopkins estate here sold Derby;" "2d. Neither I, my partner, or my firm had any interest "in the purchase of that land from you."

If the evidence shows these statements to be true, there is an end of complainants' case. For the purpose of this argument, we are willing to take the affirmative of these propositions, and show even that the evidence strongly preponderates in our favor.

1st. The answers of Messrs. Kerfoot and Pierson were called for under oath, and were thus made evidence for the defendants. They both distinctly and positively state that

neither they or either of them ever received an offer for this land, of $200 more than Mr. Derby paid, or for any more.

Here is the positive and unqualified statement of these two witnesses, called by the complainants themselves.

To overcome this, two witnesses or one witness with strong corroborating circumstances must be produced.

Their witness is Martin Andrews. He says: "I told "him (Mr. Kerfoot) that I would give $1,000 per acre for "the whole of it, with the exception of the twenty acres, "the half of which I understood was an undivided half "of the Hopkins estate. I told him I didn't like to buy "an undivided half of any person's property, if I could "help it, and told him I would give $1,000 an acre for the "residue of the property." Rec. 325.

This is the only *offer* and *only evidence* of any offer ever made to Mr. Kerfoot or Pierson, or either of them, for this land, except by Mr. Derby.

The evidence shows that the property bought by Mr. Derby included this undivided parcel, and further, that it was worth *very much* less than the other portion, and that Mr. Derby paid $860 per acre for the whole.

Can it be said that an offer of $1,000 per acre for by far the most valuable part, was an offer of $1,000 per acre for the whole? It is not pretended that any offer was ever made by any person other than Andrews. True, Andrews says, Rec., page 327, that Mr. Kerfoot well understood

that he "would go a little better than that," but he does not say that he even hinted that he would do so; neither does he narrate any facts or circumstances which would lead Mr. Kerfoot to that conclusion.

He says he told Kerfoot he did not want the undivided portion at all. Mr. Walker and Messrs. Kerfoot & Pierson all say that Walker determined to sell it all together, and the fact is, as shown by the argument filed in behalf of Mr. Derby, that $800 per acre for the whole was a much better price than $1,000 per acre, for that part which Andrews wanted.

So we have the positive testimony of two witnesses that no offer of $200 more that Mr. Derby paid, or of any more, was ever made for this land on the one side; and on the other, we have the statement of Mr. Andrews that he offered $140 per acre more for by far the most valuable portion of it. It can not be pretended there are any circumstances tending to corroborate the charge made by the complainants in this regard.

The second statement contained in this letter, and claimed to be untrue, is this: "Neither I, my partner, "or my firm had any interest in the purchase of that land "from you."

Messrs. Derby, Kerfoot & Pierson, whose sworn answers were rendered competent testimony by the complainants themselves, all testify clearly, positively and unequivocally that neither Kerfoot & Pierson, or either of them, ever had

any such interest. They go farther, and minutely give the details of the whole transaction relating to the purchase of this land by Mr. Derby, showing conclusively that Messrs. Kerfoot & Pierson were, in all respects, faithful to the trust reposed in them by Mr. Walker, and never acquired any interest whatever in this land, until after the sale to Mr. Derby was entirely closed, and their duty to Mr. Walker ended. These answers are clear, explicit, positive and wholly unevasive, and must be willfully and deliberately false, if the charge made by the complainants is true.

The evidence relied upon so far as the point under discussion is concerned, to overcome the effect of these answers, is, first, an affidavit of Mr. Pierson's, set forth on page 123 of Rec., in which he states that an agreement was made between Wm. M. Derby and Kerfoot & Pierson, dated the 19th day of March, 1867, by which Derby agreed to sell to Kerfoot & Pierson one-half of the property purchased of Walker's executor.

The fact that this agreement was entered into and was *dated* March 19, 1867, is admitted. Mr. Pierson swears in this affidavit, simply that it bears date March 19, 1867, and nothing more. The answers of Derby, Kerfoot & Pierson all state this, but state that the agreement was made and entered into after that time, and was antedated for convenience sake, in order to make the date of the agreement correspond with the date of the cash payment of Mr. Derby to Walker. I do not wish to go over this ground, but the business experience of every member of this Court, will suggest cases in his own practice, in this respect, parallel

with this. It was natural for these parties, if no fraud was intended or thought of, to make these dates correspond; while if any fraud was contemplated, they would, in all human probability, have dated this contract long after the date of Walker's deed to Mr. Derby. So this affidavit amounts to nothing, in contradicting the answers of Kerfoot, Pierson and Derby.

The complainants also claim that a certain copy of an instrument, called a bill in chancery, purporting to have been prepared at the instance of Kerfoot and Pierson, with the intention of commencing a suit against Mr. Derby for the specific enforcement of the agreement referred to in the affidavit, is inconsistent with, and contradictory of, the statement in the letter. This paper is set out in full on pages 116 to 119 of record.

We say in regard to this document: 1st. It is not a copy of any bill ever signed by Kerfoot & Pierson, or either of them. 2nd. It is not a copy of any bill ever filed in any court. 3rd. There is no proof that it was ever even read by either Kerfoot or Pierson, or that the statements it contained ever received their approval. 4th. It appears affirmatively that it was simply the original draft of a bill prepared by a solicitor, and never revised or corrected, or in any way approved by either Kerfoot or Pierson. It would, indeed, be a strange rule, if such an instrument, thus prepared, should be allowed to contradict the sworn statement of the parties for whom it was prepared.

It is not even shown that either Kerfoot or Pierson ever saw it, and every member of this court knows that it is very rare indeed that the first draft of a bill is filed without change, unless the client sits at the elbow of his solicitor during its preparation; which is very rarely the case in a large city.

In this document it is alleged that Mr. Derby bought of Walker the land in question on March 16, 1867, and that afterwards, to wit, on the 16th day of March, 1867, Derby agreed to sell to Kerfoot & Pierson one-half of the same; that said agreement was made verbally, but, on the 19th day of March, 1867, it was reduced to writing. The deed from Walker to Derby bore date the 16th, the contract between Derby and Kerfoot & Pierson the 19th, and a careless pleader, with these dates and papers before him, would be very likely thus to blunder, and it would be strange indeed for a court to hold, that a mistake thus made by the pleader, should override the statements of his employers made under oath.

The most that can be said of this paper, is, that unexplained, it was likely to create suspicion; explained, it amounts to absolutely nothing.

3d. The contract between Mr. Derby and Messrs. Kerfoot & Pierson is relied upon to show that this statement in the letter of Kerfoot is untrue.

The statements in the letter in this regard, correspond exactly with the sworn statements of Messrs. Derby, Kerfoot and Pierson, and are consistent with all the facts

and circumstances of the case. In the first place, it is conceded that both Mr. Derby and Mr. Kerfoot were men of large experience and much more than ordinary sagacity, and it may be fairly presumed that if they had had between them any such corrupt understanding and agreement as is alleged by complainants, they would, when they came to reduce it to writing, have dated it long subsequent to the date of the sale by Walker. Complainants claim that there was a studied concealment of this agreement from Walker. This is shown by the argument filed in behalf of Mr. Derby to be ridiculous, but, if true, would show that both understood the necessity of concealment, and this knowledge would have suggested the policy of postdating, instead of antedating, the contract.

The only witnesses who know the exact truth with regard to this matter, are Messrs. Derby, Kerfoot and Pierson. They all swear positively that this agreement was in fact antedated, and that it was not thought of, until several days after Walker's sale was closed and he had left for home.

The most that can be said of this agreement and its date, is that on its face it is suspicious. Explained as it is, and its effect upon the case is gone. But if we concede that it is suspicious, and is a strong circumstance against us, the proof of complainants does not go far enough to bring them within the unvarying rule of chancery practice. They have no single witness whose testimony this suspicious circumstance corroborates, and no case can be found in the books where the uncontradicted testimony of

three reputable men was nullified by the effect of one suspicious circumstance.

It must be conceded that this letter contains a correct history of Kerfoot & Pierson's whole transactions with Walker in reference to this property. If it had not been true, if there had been in it any variation from the real facts, Mr. Walker would have at once seen it, and his suspicions, instead of being allayed, would have been increased.

The complainants, having adopted the statements in this letter contained, and it having received the indorsement of Mr. Walker, except in the two particulars above noticed, and these having been, by a clear preponderance of evidence, proved to be true, it would seem that, if it, taken as a whole, establishes a defense, there is little need of further argument. Whether it so does, we leave this Court to determine.

The question here being, whether Messrs. Kerfoot & Pierson were interested in the purchase made by Mr. Derby at the time it was made, the law is, that if Kerfoot & Pierson acted in good faith up to the time the bargain was completed, their employment and duty ended, they then had as good a right as any other person to purchase of Mr. Derby the whole or any part of this land. If, after the trade was entirely closed, and all the parties were still present, Messrs. Kerfoot & Pierson had offered to purchase one-half of this land, and had then and there fairly entered into the agreement set forth in the bill, would a court of equity set it aside as fraudu-

lent? Does a court of conscience look to the substance or the shadow? If to the latter alone, then these defendants may be in danger. If to the former, they must be safe.

In the case of Wortman vs. Skinner, 1 Beasley, N. J. Repts., 358, a careful and exceedingly well-considered case, the Court held, that if an administrator at public or private sale, sells lands upon an agreement made before or at the sale, that the lands are to be bid off in the name of some other person, but for his benefit, equity will set aside the proceedings as fraudulent in law. But any agreement made, *however soon afterwards*, with the purchaser, for a conveyance to the administrator, is not within the rule. It will hardly be contended that the rule is more strict in a case like this, where the principal is on the ground, participating in and conducting the negotiations himself, than it is where an administrator is acting for the estate of a deceased person.

In the case of Kerney vs. Taylor, reported in 15 Howard, 494, the question was, whether a sale made under an order of the Orphan's Court should be set aside as constructively fraudulent. The facts were, that the sale was made by one Primrose as auctioneer, to a company organized for the purpose of purchasing, The guardian of the minors interested and the commissioners became interested in the property shortly after the sale and before the payment of the second installment of the purchase money. In that case, the land was sold for a fair price, and afterwards became greatly enhanced in value, on account of the

improvements put upon it by the purchasers. In the case at bar, the land was sold at its full value, and soon after rapidly increased, owing to the improvements placed thereon by Mr. Derby, and a fortunate combination of circumstances unknown either to Mr. Derby or Mr. Walker, at the time of the purchase.

In this case it was alleged that the guardian auctioneer, and commissioners, were interested at the time of the sale, and the evidence was fully as strong to sustain that allegation, as it is in the case at bar, to sustain the allegation that Messrs. Kerfoot & Pierson were interested in the sale to Mr. Derby.

Mr. Justice Nelson, in deciding this case, uses the following language: "It has been said also that inasmuch "as the trust imposed upon these commissioners had not "expired at the time they became interested in the com- "pany in February, 1830, even admitting their interest "then commenced, the case is still within the principle "forbidding the trustee to purchase. The one-half of the "purchase money was to be received from the purchaser "on the first of April thereafter; and the *security* to be "taken for the remainder. But we think this conclusion "would carry the application of the principle beyond the "reason upon which it is founded. The only consequence "of the interest taken in the purchase by the commission- "ers at this period, was to subject themselves personally "to the first payment of the purchase money, which we "do not see could operate prejudicially to the heirs."

In regard to the action of Primrose the auctioneer, Judge Nelson says: "It is very probable, and indeed is "virtually admitted by himself, that he was aware at the "time of the sale he could have an interest in the company "if he wished, and if this was a case that fairly admitted "the question of actual fraud to be raised, this expectation "or contemplation of a possible future interest, would be "entitled to great weight. But in the absence of actual "fraud, and with the admitted fact that the property was "sold not only for a full, but for a very large price, and "which the heirs have received, and been in the enjoyment "of for the last eight or ten years, we think it would be "pressing the principle of constructive fraud to a refine-"ment in its practical application beyond the reason of it, "as it certainly would be in utter subversion of the justice "of the particular case, to concede to it the effect claimed."

The language and reasoning of Mr. Justice Nelson in this case is peculiarly applicable to the case at bar, and as it seems to me, decisive of it. The argument upon the facts, in the brief above alluded to, proves that the case at bar comes strictly within the decisions above referred to.

II.

It may be contended that inasmuch as it is admitted that Messrs. Kerfoot & Pierson received from Mr. Derby for their interest in this property in September, 1868, the sum of $7,000, and one-half of block five, they should be compelled to account to complainants for that, even if the case fails as to Mr. Derby.

It is difficult to see upon what such a claim can with even a show of plausibility be urged.

The only ground upon which the most ingenious counsel could base it, would seem to be this.

Mr. Walker testifies that he told Mr. Kerfoot, soon after he came to Chicago, that he and Maria Walker, his wife, were interested in one-half of this property, as owners in fee; that such being the case, Kerfoot & Pierson acquired an interest in the property before the deed of Maria Walker was received, and that to that extent at least they are bound to account.

1st. The argument that must be relied upon to support this claim, if it is urged, would be directly contrary to the theory of complainants upon the other branch of the case. If Kerfoot & Pierson were themselves intending to have an interest in this property, and knew that John J. Walker had the right, as executor, to sell only one-half of it, is it likely they would have been satisfied to have Mr. Derby, their co-purchaser, take, and in effect, pay for the whole of it, and run the risk of obtaining a deed for one-quarter of it from Mrs. Walker, who was then in France? Would the original deed, drawn by Mr. Kerfoot, have been to the whole of the land from John J. Walker, executor? Would he not have had Walker convey his one-fourth interest at least? Would the confirmatory deed have been written not to convey the land, but to confirm and approve the deed already made? If it is true that Walker did tell Mr. Kerfoot that he and Maria

Walker owned one-half of this land in fee, then it is most certain that he had no idea of becoming interested in this title, until after Mr. Derby acquired it. The evidence shows that Mr. Kerfoot had been engaged in the real estate business, in Chicago, for a long period of years, and that he must have been familiar with the laws of conveyancing in force in the State of Illinois. It would require very conclusive proof to show that he would have done this business as it was done, if Mr. Walker had communicated this fact to him, and he then intended to acquire, or thought of acquiring, any interest in this land.

If, however, Mr. Kerfoot was alone working for his commissions and to help Walker on with the sale, he might have kept this knowledge secret, both from Mr. Derby and his solicitor, thinking that he was perpetrating no wrong, as Mr. Derby, who was ignorant of this fact and was buying upon the record, would get a good title from Walker as executor.

But the proof is most conclusive that Messrs. Kerfoot & Pierson not only had no interest in this purchase, but did not even think of purchasing, until after the sale to Mr. Derby was entirely concluded. If Mr. Walker did inform Mr. Kerfoot when he first arrived in Chicago, that he and Maria Walker were the owners in fee, of a part of this land, it, in all probability, made no impression upon his mind, for he well knew that before any sale could be consummated, the title would have to be examined and passed upon by an attorney.

The whole case, however, shows that Mr. Walker never did tell Mr. Kerfoot, or any one else, about this interest in fee.

John J. Walker knew that this declaration of trust was not recorded in Cook County. He knew that if he did record it, he could not sell the property until he should get his wife's deed from France. He says he was greatly in need of money at that time, and that he came to Chicago for the sole purpose of selling this land in order to raise this money, and says that he was compelled to sell the unimproved land in Chicago, or improved property in Mobile, to meet the necessities of the estate for which he was acting.

This he knew he could not do if the situation of the title was known, and his necessities, therefore, induced him to keep this interest a profound secret form every one.

Such conduct, at that time, can hardly be justified by a court of equity, but when he waits for two years from the date of his deed, until the constant labor and great expenditures of Mr. Derby has increased the value of the land more than five-fold, and then seeks to take advantage of his own fraud in the concealment of the real situation of this title, he exhibits a daring, which, in a good cause, would indeed be heroic.

Mr. Walker came to Chicago in the spring of 1868, knew that Mr. Derby was expending large sums upon this land, knew then everything material in relation to this case that he knew in April, 1869.

He had discovered the fraud, if any there was, early in 1868, but according to his own testimony, he only became convinced of it when the great value of the land became a certainty. So long as that was in doubt, he was only suspicious. When the doubt was removed, his suspicions ripened into moral certainty. He had procured from Mr. Derby, in exchange for his notes, real estate in Chicago, which had greatly increased in value, but when he files his bill to regain the land sold to Mr. Derby, he does not even offer to re-deed it. His sense of right does not apparently even suggest the propriety of so doing.

This delay in commencing suit, when he knew that Mr. Derby was daily expending money upon the land, and this neglect to even offer to do what equity in such a case requires, viz., reconvey the land he had received from Mr. Derby, ought, in a court of equity, to bar recovery on his part.

Cox v. Montgomery, 36 Ill., 396.

The truth is, that the declaration of trust upon which the claim of the complainants is based, was kept a profound secret by Mr. Walker, until the great value of this land became apparent. All the acts of all the parties, all the papers prepared for the transfer of this title, conclusively show that such is the case, and that the claim of Mr. Walker in this regard, is most unjust and inequitable.

He comes to Chicago holding himself out as the executor of Arthur F. Hopkins, with full power to sell and convey this entire property. He files of record, the will giving him this authority, keeping a profound secret this declara-

tion of trust. He has an abstract of title prepared, showing full power and authority in him to sell and convey the entire property *as executor*.

He makes the contract of the 6th of March *as executor*. In pursuance thereof, he executes, acknowledges and delivers his deed purporting to convey a perfect title to this whole property *as executor*.

He sees prepared, a deed from all the parties interested, not to convey the title, but to confirm his acts *as executor*. He receives his pay, the *full value* of the land, *as executor*. He waits until the improvements placed upon the land through the instrumentality of Mr. Derby, have increased its value more than five-fold, and then, as *part owner* of the land in question, comes into a court of conscience to set aside his own solemn acts, as such executor.

This is not designed to cover the ground gone over by the argument filed on the part of Mr. Derby. To that I refer as containing a full and fair discussion of all the facts and circumstances material to be considered. It applies as well to the defendants, Messrs. Kerfoot & Pierson, as to Mr. Derby.

The complainant's case is based solely upon circumstances, and hangs upon straws. Not a single witness proves a single material charge made in their bill. We meet their case by the positive evidence of three reputable citizens who alone know the exact facts. Their statements are full, clear and unequivocal. They are not impeached or sought to be impeached.

Before the decree of the court below can be reversed, the well-settled rules of chancery practice will have to be set at naught.

If it is reversed at all, it must be upon facts and circumstances alone.

These facts and these circumstances have been fully considered by the Judge of the court below, a man familiar with the circumstances and situation of property in Chicago, and who had the means of knowing the character and standing of the witnesses introduced, and who must have been better qualified to judge of them correctly than any appellate court. His opinion shows that he most laboriously and carefully considered every material fact and circumstance that bore upon the case. We herewith file and refer this court to it. It is believed that it contains a fair analysis of the case, and that its conclusions upon the facts, are sustained by the evidence, and its judgment of the law, by principle and authority.

MONROE & BISBEE,

Solicitors for Defendants, Kerfoot & Pierson.

IN THE

Circuit Court of the United States,

Northern District of Illinois.

IN CHANCERY.

JOHN J. WALKER, ET AL,

—*vs.*—

WM. M. DERBY, ET AL.

Decision of Hon. H. W. BLODGETT.

WASHINGTON, D. C.
W. H. MOORE, PRINTER, 511 ELEVENTH STREET.
1872.

Circuit Court of the United States,

Northern District of Illinois.

JOHN J. WALKER, ET AL,

—*vs.*—

WM. M. DERBY, ET AL.

Decision of Hon. H. W. BLODGETT.

This is a bill in equity to set aside a conveyance made by the complainant to the defendant Derby, in March, 1867, of land situate near the southern limits of the City of Chicago, on account of fraud.

The substantial allegations of the bill are, that the real estate in question at the time of the transaction belonged to the complainants, as executor and legatees of A. F. Hopkins, late of Mobile, Alabama, deceased; that, about the first of March, 1867, said complainant, John J. Walker, employed the defendants Kerfoot and Pierson, then doing business as real estate agents under the firm name of S. H. Kerfoot & Co., in the City of Chicago, as agents for complainants to sell said real estate, which employment the said Kerfoot and Pierson accepted. But that said Kerfoot and Pierson, disregarding their duty in that regard and taking undue advantage of the trust and confidence reposed in them, made a corrupt agreement with Derby whereby they sold said land to Derby at a grossly inadequate price,

with a corrupt and secret understanding and agreement between said Kerfoot & Pierson and Derby, that they (Kerfoot and Pierson) were to have and take one half of the said lands, at the price for which they sold the same to the said Derby, and that said Walker, being misled by the confidence he had reposed in the said Kerfoot & Pierson as agents for said complainants in that behalf, consummated and completed the sale thus fraudulently made.

Derby, Kerfoot & Pierson, and divers other persons, who had purchased portions of the land, are made defendants, and their answers are called for under oath.

By their answers they (Kerfoot & Pierson and Derby) explicitly deny the charges of corruption and fraud made in the bill, and insist that Derby was the sole purchaser of the land in question without any fraud or secret agreement as charged in the bill.

The undisputed facts shown by the evidence are substantially these: That the testator, A. F. Hopkins, died in December, 1865, at Mobile, Alabama, and by his will appointed said John J. Walker and one W. G. Jones his executors; both of said executors qualified; but Jones, on or about the 6th of February, 1867, resigned his executorship, leaving the said Walker sole acting executor. By the terms of the will the estate of the testator was to be divided between his wife and children, and the will empowers the executors "to sell and convey all the houses "and lots of the testator in the City of Mobile, *and all "other lots, wherever situated, on such terms and at such "times as the said executors shall deem most advantageous to "the estate.*"

After granting this power, the testator proceeds to state: "I have the title to about 36¼ acres of land at, and adjoin-"ing the City of Chicago, in the State of Illinois; but my "daughter, Maria Walker, has an undivided interest in

"them of two acres, and my son-in-law, John J. Walker, "has an undivided interest of two and one-half acres in "that part of my land belonging to J. W. Pryor and my- "self, and for which the said Walker holds my written "contract."

The lands in question consist of certain lands lying in Cook County, just south of the then southern limits of the City of Chicago, to wit: The East half of blocks one and six, all of blocks four and five, and lots one, two, twenty-three and twenty-four of block twelve in Pryor & Hopkins' Subdivision of the West half of the Northwest quarter of Section three, Township thirty-eight, Range fourteen, and an undivided half of twenty acres of land lying in the Northeast corner of Section four, same Township and Range.

Said testator, Hopkins, had owned said lands since 1852 or 1853. They were unimproved and unproductive. About the 1st of March, 1867, the said estate of Hopkins was in pressing need of money to pay debts which could no longer be postponed or delayed; and said Walker, as executor, was under the necessity of selling either some improved real estate in the City of Mobile or this property in Chicago. The firm of Rees & Kerfoot had been, from 1855 to 1860, to some extent, the agents for the owners of said lands, and in 1865, some correspondence had passed between Kerfoot & Co., and Walker, in regard to the value and salability of this property. Walker came to Chicago about the 1st of March, 1867, for the purpose of selling said lands. After having made inquiries of several persons in regard to Kerfoot's standing as a business man and real estate agent, Walker placed the business of selling the lands in the hands of Kerfoot & Co., his chief acquaintance being with Mr. Kerfoot. Walker wished to sell for cash, and Kerfoot advised him that he could not do so without great sacrifice, and told him that it was a bad time to sell; that

property had declined, or at least had become stagnant in the market, since the fall before, and that he had better wait until spring opened, and until navigation and business again revived the prices. Walker then suggested that if he could make a loan of $10,000 to meet his necessities, and secure the same on this property, he would delay selling; but Kerfoot informed him that it would be impossible to negotiate a loan on such security in this city, the land lying outside, and being unimproved. They visited the land and concluded to put it in the market at $1,000 an acre cash, and see what could be done with it on those terms. Kerfoot stated that he knew of only one man who would be likely to make the purchase, and that was Derby the defendant. He introduced Derby to Walker, stating as his reason for making the proposition to Derby, that Derby had lately been dealing in lots in that vicinity, and had his eye on investments in the southern part of the city, and that Derby having lately sold his house and lot for $45,000, had the means to buy if he chose to do so. Walker and Derby had much negotiation together, which finally resulted in a written agreement between them, bearing date on the 6th day of March, 1867, by which Walker, as executor of Hopkins, agreed to sell the land in question to Derby for $25,600. Eight thousand two hundred dollars was to be paid in cash and the balance in three equal annual payments, with interest at six per cent., Walker to give a clear and perfect title.

Walker had an abstract of title prepared, which was examined by Monroe, an able lawyer in this city, in behalf of Derby, who pronounced the title satisfactory.

About this time Derby manifested some reluctance to close the bargain and became critical and captious in regard to the title, and finally insisted or suggested that he wanted a quit-claim deed from the legatees in addition to Walker's deed as executor, which Walker promptly

agreed to furnish, and it was agreed that the notes for the deferred payment should remain in the hands of Kerfoot until said quit-claim deed was duly executed and delivered. On the 19th of March, the transaction was consummated by the execution and delivery to Derby of a full covenant warranty deed from Walker as executor and trustee, under the last will and testament of A. F. Hopkins, and the execution to Walker as executor by Derby of the notes to be given for the deferred payments; also, a trust deed on the premises sold to secure the payment of said notes. The deed and trust deed were duly delivered, and Derby paid to Walker the cash payment of $8,200, and the notes, as had been stipulated were left in the hands of Kerfoot. The deed and trust deed bear date on the 16th of March, but were not delivered nor the money paid until the 19th. The deeds and trust deeds were duly recorded in the Recorder's office of Cook county on the 19th. On the same day Kerfoot & Co. rendered to Walker their bill for services, commissions and disbursements, about the sale and their agency in that behalf, the item of "commissions" being $711. On the 30th of May, 1867, Walker delivered a quit-claim deed to Derby, and became entitled to the delivery of Derby's notes. A new arrangement was, however, entered into between Walker and Derby, by which said notes were paid in full by Derby's paying $10,000 cash and conveying certain real estate in section thirteen, just west of the then city limits, whereupon said notes were delivered to Derby and the trust deeds duly released by the trustee. That some time in September, 1867, an agreement in writing, bearing date March 19, 1867, between the said Derby and the said Kerfoot and Pierson, was filed for record in the office of the Recorder of Cook county, whereby Derby, in consideration of $375 in cash, agreed, in substance, to sell and convey to Kerfoot & Pierson one-half of the real estate bought of Walker, on payment of half of the money Derby had paid down to Walker, and the securing of the one-half of the deferred

payments by trust deed on said one-half, payable at the same time Derby's payments to Walker matured; said agreement to be consummated on or before the 1st of September, 1867.

It is also shown by the proofs and not denied, that a difficulty arose between the parties, Kerfoot, Pierson and Derby, in regard to the completion of this contract, and that a bill in chancery for a specific performance thereof was prepared by the solicitors of Kerfoot & Pierson, but which was in fact never filed, the matter having been compromised without suit.

So far the facts are undisputed. The complainant contends further that the price for which the land was sold was grossly inadequate and much below the price at which it could have been sold, if due exertions had been made in good faith by Kerfoot & Co., as they were in duty bound to do. Much evidence has been adduced by both parties upon this point. Indeed, the bulk of the evidence taken is upon this question of inadequacy of price, and the neglect or refusal of Kerfoot & Co. to obtain or consider offers from other persons than Derby.

There is really no disagreement between counsel in regard to the principles of law which govern this case; the only difference being as to whether the facts proven by the record make up a proper case for the applications of those principles. The rule of law governing the relations between principal and agent in regard to transactions of this character, is too well known and too familiar to require the citation of authorities. Perhaps it has nowhere been more clearly and concisely stated than in the opinion of the learned Chief Justice BREESE of this State, in the case of *Kerfoot* v. *Hyman*. He states the rule as follows: "It "is well settled that an agent employed to sell land can- "not himself become the purchaser, and he is bound to "act with the strictest fairness and integrity, and also "with the utmost good faith."

As I have before stated, the defendants, Kerfoot, Pierson and Derby, have each, as required in the bill, answered under oath, and all have broadly and unequivocably denied that there was any agreement between them, by which Kerfoot & Pierson were to have an interest of any kind in the land at the time the sale was made by Walker to Derby; and while they admit the agreement for the purchase of one-half of said land as set forth in the bill, they insist that the said agreement was in fact made some time after the said 19th of March, but before the 30th of May, 1867, when the quit-claim deed was made. It is insisted by the complainant that the portion of the answers setting up the time when this agreement was made is not responsive to the bill. It is true, the answers of the said defendants to the fourth specific interrogatory of the bill only admit that defendants executed an agreement of the tenor and effect and date set up in the bill, but it is equally true that the charging part of the bill alleges a corrupt agreement between the parties, Derby, Kerfoot and Pierson, during the negotiation and the sale, and a sale at an inadequate price by reason thereof; and it clearly was the duty of the defendants to answer all the charging parts of the bill. Certainly, the *time* when Kerfoot and Pierson acquired an interest in the said land was the most material part of the complainant's case, as made by the charges in the bill. The position of the complainant, that the part of the answer of the defendants which states *when* the agreement was in fact made, is not responsive to the allegations of the complainants, seems to be pressing the question of irresponsiveness to a degree of nicety not justified by the authorities which have been quoted. The complainant in this case had either to prove the allegation upon which they relied for setting aside the sale complained of, by resting upon the *prima facie* evidence which the written instrument between Kerfoot and Pierson and Derby furnished, as to the time when it was actually exe-

cuted, or to put in testimony establishing that time as a matter of fact. They have chosen to call testimony, and the testimony they have thus elected to call is that of the defendants themselves. The law upon this point is well settled by the Supreme Court of the United States in regard to the effect of an answer in chancery under oath, in the case of *Union Bank of Georgetown* v. *Geary*, 5 Peters, 99, the rule was laid down, that the answer of the defendants, called for under oath, if responsive, is conclusive, unless disproved by two witnesses, or one witness and strong corroborative evidence. The same principle is also fully adopted by the same Court, in

Carpenter v. *P. and W. Insurance Co.*, 4 How., 185.
Parker v. *Phittiplace*, 1 Wall., 684.
Tobey v. *Leonards*, 2 Wall., 423.

In this case, the witnesses called by the complainants, namely, the defendants themselves, deny the allegations, pointedly and directly. They state explicitly, that no such agreement as is alleged, was entered into by themselves at the time the sale was pending, and not until long after it was consummated, and unless such an agreement was made at the time charged, the complainants have failed to make out their case.

Having then, failed to prove the case alleged in the bill by the evidence of the defendants themselves, it becomes incumbent upon the complainants to establish the facts alleged by two witnesses, or at least one witness and strong corroborative circumstances. The record fails to show us any witness who has testified in regard to the time when this contract was made, save the defendants, who are called upon to answer under oath, and have answered, stating that this time was long after the sale between Derby and Walker, and long after the time stated in the bill.

There is, then, left on the record, only the presumption arising from the date of the agreement, which is explained

away by the answer of the defendants, and which explanation must be accepted as true, and some other circumstances of a somewhat suspicious character, which are relied upon by the complainants as establishing the facts upon which they claim to recover. These circumstances I shall allude to hereafter, but pass from them at present, to say, that I shall assume as an established fact, from the evidence, that the agreement between Kerfoot & Pierson and Derby, which bears date the 19th of March, and which is set up in complainant's bill, as the fraudulent agreement on which they claim relief, was, in fact, made some considerable time after that date, and was so dated for convenience, as stated in the answers. The material question then, is, when did the employment of Kerfoot & Co., as agents of Walker, to sell this land, cease? The evidence shows, that they rendered their bill and were paid by Walker, for their services, on the 19th of March.

What was the duty which they had undertaken to perform? Obviously, according to the statements of the bill, to find a purchaser and effect a sale of the land in question. Had they not done this? They had brought Derby and Walker together. The terms of the sale had been agreed upon, the deed from Walker to Derby had been executed, Derby had made his cash payment of the purchase money to Walker, and had executed his notes and trust deed securing their payment. The trust deed had been delivered and recorded, and no act that I can think of, remained to be performed by Kerfoot & Co., as real estate agents, in connection with the transaction. It is true they still held Derby's notes, which were not to be delivered to Walker until he delivered to Derby the quit-claim deed of himself and the other legatees of Hopkins; but were they, for this purpose, anything more than mere stake-holders?

It was no part of their duty or function as agents for Walker to hold his pledge, that he would keep his promise and word with Derby, in reference to this quit-claim

deed. But much of the importance of this relation assumed by them in connection with the holding of their notes, depends, perhaps, upon the relation which the quit-claim deed bears to the title itself; and in order to fully appreciate this, it becomes necessary to review the testimony for a moment, bearing upon the capacity in which Walker was acting, and his own relations to the title to the land he was selling. It will be remembered that the will gave Walker, as executor, the most ample power to sell and convey the real estate of the testator. The bill alleges and the testimony shows, that Walker and his wife, Maria, were each entitled to one quarter of the said Chicago land, but the evidence of their title was not then on record in the recorder's office of Cook county, and Derby and his counsel, Monroe, both testify that they had no idea of the existence of such interest at the time of the purchase.

Walker's wife was a legatee under the will, and the presumption is, that when Walker spoke of his interest in the land, he was understood to refer to the interest of his wife, under the will, rather than to the secret interest manifested by the unrecorded deed between himself and Hopkins. Pryor's evidence shows that the two acres, and the two and a half acres, alluded to in the will of Hopkins, as belonging to Walker and wife, pertained to another tract of land. I consider this fact as clearly proven, and that the allusion in the will to the interest of Walker and wife in the tract of land near Chicago, is to another parcel of land purchased by Pryor and Hopkins from John Wentworth, the title to which had been forfeited. Walker testifies that it had become necessary to raise $10,000 out of the property of the estate, to meet pressing liabilities, and he came to Chicago to sell the property, as a part of the estate. His previous correspondence with Kerfoot alluded to the property as the property of the estate. The abstract of title exhibited by him, showed the title in A. F. Hopkins, deceased, and no one else. There was no evidence of record, or in the abstract, that

Walker or his wife had any interest or title in the property which Walker proposed to sell. I presume that in the negotiation with Kerfoot and Derby, Walker made the same explanation, in regard to the land alluded to in Hopkins's will, which Pryor has made in his deposition, showing and stating in that explanation, that the land mentioned in the will, as owned by Walker and wife, was not a part of the land that he was then selling. When Walker had agreed upon the terms of sale with Derby he signed a memorandum agreement, on the 6th of March, as the executor of the estate of Hopkins. His deed to Derby, of the 16th of March, purports to convey the entire estate, under his power as executor of the will. He took the notes for the purchase money, as executor, and that, too, in such amounts, that they could not be divided conveniently, between himself and wife, in their own right, and the estate of Hopkins, but took them in gross amounts, without reference, apparently, to any interest which he and his wife claim now to have had in the property, at the time of sale. Moreover, Mr. Monroe, an able and experienced real estate lawyer, in this city, passed upon the title, as shown by the abstract, and found the title, as shown by the abstract, to be in A. F. Hopkins. Could parties dealing with Walker, have supposed he was dealing in any other capacity than as executor, and that the estate for which he was executor, owned the entire property he was selling, and that the only party to be benefited by the sale, was the estate of Hopkins. It is to be borne in mind that Walker was in no need of money for his own purposes; that neither he nor his wife had occasion to raise money at this time, by the sacrifice of property. The only pretext for selling the property was to raise money for the estate. Walker says, that he spoke to Kerfoot about the interest he and his wife had in the land, and asked if a deed from them would not be necessary, to which Kerfoot replied, that the quit-claim deed would make that all right. This was evidently at the end of the

transaction, after the quit claim deed had been agreed upon, and was not thought of or mentioned by Walker, until the deed of Walker had been prepared, and, in fact, was probably executed. In the light of these facts, I cannot but believe that the quit-claim deed insisted upon by Derby, was a mere matter of super caution on his part, induced, probably, by the experience of himself or others in dealing with executors and trustees, and the numerous litigated cases that have been developed in Chicago, in reference to that class of interests.

To my mind, it is perfectly clear, under the evidence, that the parties all considered the title made by Walker as executor, to be ample. Derby insisted upon the quit-claim deed as an act of ratification and estoppel against the legatees; and Walker, on his part, on its being suggested to him, promptly agreed to obtain it. The notes were left in Kerfoot's hands because Walker was willing to give a guarantee or pledge for the fulfillment of his promise in that regard, and because he had had some conversation in which suggestions had passed between himself and Derby, that Derby might soon be in a condition to cash the notes, or some part of them. Walker had, therefore, no occasion to take the notes away. If he expected to raise money on them, by hypothecation or otherwise, he could but do so in Chicago where Derby was known. It was, therefore, convenient for him to leave these notes in the hands of Kerfoot as an earnest of his willingness to comply with the terms exacted by Derby.

Concluding, then, that this quit-claim deed was not deemed necessary by the parties to pass the title, I can not but believe that Kerfoot & Pierson's agency terminated upon the execution and delivery of the deed from Walker as executor, and that the parties so treated and deemed it. When the agency was at an end they had the same right, as against Walker, to deal in this property as any other persons. The mere fact that they had been engaged as

agents for Walker in negotiating the sale to Derby did not estop or preclude them, for all time, from making an advantageous purchase of the property. After the transaction between Walker and Derby was at an end, and their relations as agents ended, there was nothing more to be done by Kerfoot or Pierson in reference to the matter. They had found a purchaser. Walker had, by the money raised from the sale, relieved himself of the pressing necessity which brought him to Chicago. He had given a deed ample, under the power invested in him as executor, to pass the entire property, and, it seems to me, that there was no longer anything for Kerfoot & Pierson to do in the transaction as agents for complainants in regard to the sale which they had undertaken to obtain for them. Therefore, their agency was at an end. They had fulfilled their agreement and had performed all the duty which the law would imply against them from the terms of their employment. They had been paid, which is usually accepted as the best evidence that the undertaking has terminated and the relations ended.

In disposing of this question as I have, I have in my estimation, substantially disposed of the case, for, unless the complainants show, that Kerfoot & Pierson acquired their interest in the property during the continuance of their agency, the whole fabric of the complainant's case falls; but, as much labor has been bestowed by counsel, and much stress laid upon circumstances shown in the evidence, which they claim establish the allegations of the bill, in regard to the corrupt agreement charged against the principal defendant, I must, in justice to the counsel and to myself, take a few moments to review the testimony. In this branch of the case the evidence, as to the inadequacy of the price of the property is important, mainly, as a circumstance tending to show the bad faith of the agent in sacrificing his principal's property for his own purpose. I have, therefore, looked carefully over the evidence as to point of inadequacy of price, and must

say, that I fail to find any convincing proof of such inadequacy in the record.

It is true that some of the witnesses for the defendants place a larger estimate upon the value of the property at the time it was sold to Derby, than what it was actually sold for; but we must bear in mind that this property had no fixed market or regulated value. Its value, as stated by several of the witnesses, both for the complainants and defendants, was what is termed speculative or prospective, depending upon the growth and development of the city to which it lay contiguous, and also depending upon the fact, whether that growth should be in the direction of this property. Here was a growing city. This property lay near the southern limits. It was a problem to be solved only by time, whether the city should expand, if at all, in the direction of this property, or whether its growth should be to the west or to the north, where there was an unlimited area. It was, therefore, a doubtful proposition whether this property would or would not advance in value. It was as you may say, in looking at it from the standpoint of witnesses or purchasers at the time of this transaction, as much a matter of probability that it would decline in value as that it would advance. I cannot shut my eyes, nor do I think the Court ought to do so, to the fact, that the unimproved suburb property of the City of Chicago has, within a few years, declined to such an extent as to be almost valueless, or, at least, utterly unsalable, and then advance within a short time so as to be in great demand at unprecedented prices.

The witnesses on the part of the complainant who testified as to the largest values are Andrews and Pryor; and in regard to these witnesses, I must be allowed to say, that I cannot but believe, from their testimony, that their judgment as to the value of this land in the fore part of March, 1867, is largely colored by subsequent transactions, and the advance in the property, which no one at

that time had any valid reason for anticipating. So, too, of several of the other witnesses on the part of the complainants who fixed the value upon the property; and I might say, in this connection, that the value which they fixed is not so largely in excess of the price at which the property was sold as to strike the mind, at first blush, as grossly inadequate.

The rule laid down by the Courts in determining this question of adequacy or inadequacy of price, is, that the price must be so small as to strike the mind, in the light of the testimony, at first blush, as grossly inadequate, and raise the conviction that the property was sacrificed in the market for a price less than its actual value. Let us review this testimony for a moment. Andrews says that he would have paid $1,000 an acre, and perhaps $1,200 an acre, for that portion of the land lying east of State street, and Pryor fixes the value of the land in the light of his subsequent inquiries in April, and some correspondence which he had in February, at $1,500 per acre. Prior, however, between April and June, according to his own testimony, sold his own land, in the same subdivision, at less than $1,200 per acre; and Andrews, while he says that he would have purchased that portion which lies east of State street for $1,000 per acre, and perhaps would have gone higher, at the same time admits that his ability to purchase, and the question whether he could have purchased at all, depended upon whether he should succeed in enlisting a cousin or relative of his in Ohio in the venture with himself. So that the testimony of these witnesses, and they are the only ones whose testimony is relied upon strenuously on the part of the complainants, fails to show that they, if they had had the money, would have paid much, if anything, over $1,000 for the portion of the land lying east of State street; and all the testimony concurs in establishing the fact, that the land lying west of State street, being an undivided interest, and

being in a less desirable locality, would have brought a much lower price in the market. It will be borne in mind that this land sold for something near $875 an acre in gross, including the streets, and selling as it did by the acre rather than by the lot.

Now, we must also bear in mind that Walker was here for the purpose of raising money to meet the liabilities of the Hopkins' estate; that it was desirable for his purpose not only that he should sell the land for a good price, the highest that he could obtain in the market, but that he should also sell it to a purchaser whose paper would have a marketable value here or wherever he should have occasion to raise money; and I think, in view of the fact, that Derby was shown to be a man of large wealth in this community, Walker would naturally have considered him a desirable purchaser, and justify himself for deducting $100 or $150 per acre from a speculative price.

In the light of all these circumstances, taking complainant's testimony alone, it seems to me that the proof does not show any such gross inadequacy of price as to raise the presumption of unfair dealing. But to meet this testimony on the part of the complainant, the defendants introduce the testimony of six witnesses, all of whom are well known to the Court, and in whose safe, cautious business habits and judgments the Court has much confidence. All of them testify, substantially, that this property was not worth in the market any more than it was sold to Derby for.

In connection with this testimony, I will also allude to the fact, that Walker was himself present and negotiating this sale, and I doubt whether the rigid rule in regard to the relations between agents and principal should apply with its full force to a case where the principal is on the ground and has an opportunity to understand the situation

for himself. It is true that this furnishes no reason why Kerfoot should enter into a corrupt and secret agreement with Derby by which they should acquire an interest in the property unknown to Walker, and while acting as his agent, but upon the adequacy or inadequacy of price as a circumstance tending to prove this secret agreement or establish this theory on the part of the complainant, it seems to me that it is a pregnant fact, because, Walker being here, and having the means of making inquiries touching the value of this property, must be presumed to have acted as much upon his own judgment as upon that of Kerfoot, in regard to whether it was best for him to make the sale of this property at the price which Derby was willing to buy it for, or forego the sale and make provision for the necessities of the estate out of Mobile property. He was to be the judge. He did not rely upon Kerfoot & Pierson in regard to the expediency of selling at the price which Derby offered. He could have repudiated Derby's offer and refused to sell the property at the price offered. He was not obliged to accept the proposition unless his judgment so dictated.

In connection with the same class of testimony, I must also consider the fact that it is alleged in the bill, and there is some proof in the record to show that Kerfoot did not communicate to Walker all the offers which had been made to him. It is alleged that Andrews had made an offer for the purchase of this property and that Kerfoot did not communicate that to Walker. In reference to the testimony in regard to Andrews' offer, it will be borne in mind that Walker was anxious to sell for cash; that Andrews left the city upon a problematical and doubtful suggestion that he would purchase, or might purchase, if he could get a relative of his interested with him, thereby clearly conveying the idea to Kerfoot's mind that his purchase or ability to purchase was contingent upon what should transpire when he should be able to see the person from whom he expected to raise money; and I cannot but look upon

the testimony of Andrews, in that regard, given at this late day, as to his intentions and purposes at that time, as being given more in the light of his judgment, in looking backwards from the present, rather than in looking forward from the time when the land was sold.

Andrews had made some investments in the locality of this property. He says that he was desirous of purchasing it, but the evidence shows that here was an area of many thousand acres of land adjoining and contiguous to the southern limits of this city, all in the market, all speculative property, all having only a prospective value, and the mere fact that twenty or thirty acres of this land was purchased by some one else in the absence of Andrews, when there were other tracts that he could have purchased for the same price, or even at a lower price, does not, of itself, seem to me to prove that Andrews would necessarily, if he had succeeded in interesting his relative and returned to Chicago, have purchased it at any higher price than Derby did, when he found himself brought in contact with Walker, or became possessed of the information that Walker was under the necessity of selling and was determined to sell at some price or other.

But it is alleged also, as another circumstance tending to show this fraudulent combination on the part of these parties, that Kerfoot and Pierson's interest in the property was concealed from Walker. The force of this circumstance falls to the ground as testimony, when I have disposed of the main facts in the case, that this purchase was not made until the termination of Kerfoot and Pierson's agency in the transaction. If they had right to make the purchase, they were then under no obligation to expose their transactions in a business matter, to Walker or any other person. They had the right if they saw fit to do so, to keep it concealed, although there is no evidence, to my mind, of any concealment other than what other business men would have made under similar circumstances.

It is again claimed that the bill that was filed by Kerfoot

and Pierson cuts an important figure as evtdence, and that the statements in that bill are conclusive evidence as admissions of parties to show that this secret agreement existed between Derby and Kerfoot, from the inception of the negotiations with Derby, and the complainant's counsel have seized upon the allegations in that bill, that "*there* "*was a verbal agreement which was subsequently, on the* 19*th* "*of March, reduced to writing,*" as unanswerable evidence in support of this case. It was admitted on the trial, and also appears in evidence, that this bill was never filed; that differences arose between the parties and the matter was placed in the hands of counsel by Pierson, and the bill drawn. It never was signed by Kerfoot or Pierson, and in fact, Kerfoot was not in the United States at the time the bill was drawn. It was certainly not conclusive in any of its allegations as against Derby. It was made in antagonism to Derby's interests for the purpose of making out a case against him. And the bill is evidently as against Pierson, nothing but the work of counsel, without ever having been revised or corrected, or especially adopted by the complainants therein, or either of them. I therefore attach no importance to this bill as a matter of evidence in this case.

Again, it is claimed that Kerfoot is contradicted in many of the important features of his answer, by the testimony in the case, and one important fact which it is claimed is contradicted by the record, is that he denied, in the answer, that he was ever the agent of Hopkins in reference to this property from 1855 to 1860.

The evidence adduced to sustain the allegation of the bill in that regard, is a letter of attorney, signed by A. F. Hopkins and Pryor, constituting James H. Rees and Samuel H. Kerfoot the agents of those parties with reference to this property, authorizing them to plat and subdivide the property and sell it for them.

Now it may well be that this transaction of fifteen years

ago might have escaped the recollection of Kerfoot entirely; and further, the management of this property at the time this letter of attorney was in force, may have been in the hands of Mr. Rees exclusively. Mr. Kerfoot being the junior member of the firm of Rees & Kerfoot, may have had actually nothing to do with the active management of the property; may never have had possession of the power of attorney, and may never have had occasion to examine it, or act under it, personally himself. There is no evidence that he ever did perform an act under or by virtue of the power of attorney which could have impressed upon his recollection the fact that he was the attorney of Hopkins. The management of this property from the time that Hopkins acquired an interest in it seems to have been principally in the hands of Pryor. Pryor resided in New York, and Hopkins in Mobile, Ala. During the war Pryor paid the taxes for Hopkins, kept the property from being sold for taxes, and as the responsible manager of the property, was in correspondence with Kerfoot, and this too, probably, after the dissolution of the firm of Rees & Kerfoot, leaving on the mind of Kerfoot an impression that whatever he had to do with the property had been only as the agent of Pryor—not as the agent of Pryor and Hopkins. Therefore, this element of the complainant's testimony as a circumstance going to show a contradiction of the answer of Kerfoot, and thereby general untruthfulness seems to me to be clearly explainable.

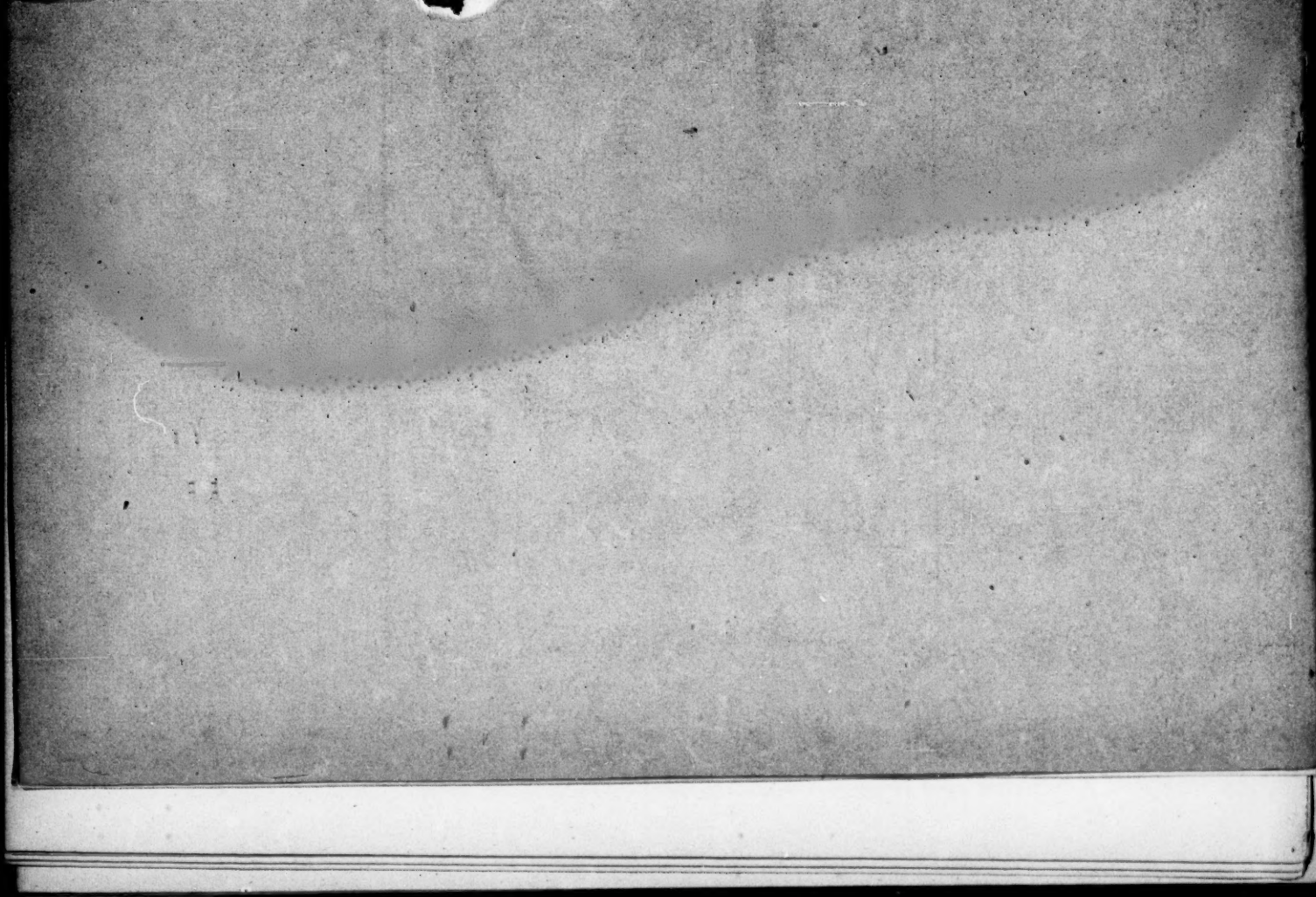
Then in view of all the testimony, and inasmuch as the laboring oar in this whole case is with the complainant; and inasmuch as by the bill the defendants, Kerfoot, Pierson and Derby, are charged with a grave offence against morality and commercial fair dealing, which if proven should be met with severe punishment, and should subject them to severe damages, or at least the forfeiture of all they attempted to take by their conduct, it seems to me that the complainants have failed to make out by the proof the case, which they have charged in the bill.

It is true there are some circumstances in the case which might go far to raise suspicions in the minds of the complainants that the dealings with them had not been entirely frank.

The date of the agreement, and the fact that the information came to Walker from Pryor, and perhaps from other interested parties, shortly after the sale, that he had not been fairly dealt with, were calculated to raise a suspicion in the mind of Walker; but where is there upon the record any conclusive and tangible proof of which the mind of the Court can take hold, as satisfactorily establishing the main allegations in this bill, as against the presumptions of innocence which the law raises in favor of parties thus charged, and their denial under oath of the charges against them. So far as the present price of this property and its rise in value or price after the sale are concerned, they are circumstances which can have and should have no weight with the Court. It is a part of the history of this city, and the Court cannot close its eyes to the fact that there were extraordinary rises in real estate in and about the city between the 1st of March, 1867, and October, 1868, and it is undoubtedly true that this property partook of that advance, so as to increase fivefold, if not more, in that interval. But the main question really is, was this property sold for less than its market value at the time of the transaction between Walker and Derby, and was it so sold at the corrupt instance of Kerfoot and Pierson. In view of all the proof in the record, I am compelled to say that there is no sufficient evidence to satisfy my mind that it was at that time worth any considerable sum more than the $875 which Walker realized per acre for it. It is true, some witnesses say that they might have paid $1,000 or $1,200 an acre; but is it to be presumed that if these witnesses had been brought in contact with Walker and found that Walker was determined to sell, they would have paid him more than Derby did. If you

are to disturb real estate transactions of this city, because of unprecedented and unparalleled advances in price immediately after the sale, there is hardly a title here that could withstand the test of a judicial investigation.

In view, then, of all these considerations, I shall find for the defendants and dismiss the bill.



Supreme Court of the United States.

No. 109.

JOHN J. WALKER, MARIA WALKER, et al.

vs.

DERBY, KERFOOT & PIERSON.

P. PHILLIPS,

Of Counsel for Appellants.

McGill & Witherow, Printers, 1107 E street, Washington, D. C.

Supreme Court of the United States.

DECEMBER TERM, 1871.

WALKER ET AL.
vs.
DERBY ET AL.

BRIEF OF P. PHILLIPS FOR APPELLANTS.

The present appellants, complainants below, filed their bill against William M. Derby, to set aside the sale of certain real estate in the city of Chicago, made to him through Kerfoot & Pierson, real estate brokers, employed by complainants to effect the sale, on the ground of combination and fraud between said Derby and Kerfoot & Pierson, the said agents having been interested in the purchase.

This bill was filed 19 April, 1869, (p. 11,) and was answered by Derby. To this bill was exhibited an agreement of the 19 March, 1867, showing the joint interest of these parties.

On the 10 August, 1869, (p. 43,) an amended bill was filed, to which Kerfoot & Pierson, Derby, and certain subsequent purchasers, were made parties.

This bill also exhibited a certan bill in chancery, in the name of Kerfoot & Pierson, as complainants, to enforce against Derby ther rights, existing under the agreement, exhibited in the first bill.

The land in controversy was purchased many years back by Judge Arthur J. Hopkins, of Mobile, in conjunction with Mr. Pryor, then of Alabama, and now of New York;

and Kerfoot had been constituted the agent of Hopkins to survey and sell the same, under a power of attorney, set out in the record, (p. 130.) This purchase was subsequently divided between these gentlemen, and Judge Hopkins's division is shown by the map.

Judge Hopkins died in Alabama in 1865, and by his will constituted the said J. J. Walker his executor, with power to sell his estate.

Prior to his death he had, by a written instrument, declared a trust in favor of said Walker and of Maria his wife, each to one-fourth of the premises in dispute.

This title is fully set forth in the bill of complaint, and admitted as averred, in the answers of Derby and Kerfoot & Pierson.

The executor of Hopkins, finding it necessary to raise money to preserve the improved property in the city of Mobile, visited Chicago in the month of March, 1867. Being an entire stranger, and knowing that Kerfoot had been the agent of the testator, he applied to the firm of Kerfoot & Pierson, of which he was a member, to procure a loan of $8,000 or $10,000 on the Chicago lands. He was informed by them that such a loan was impracticable. It was then, on consultation, determined to effect a sale, and the said Kerfoot & Pierson were employed to effect it. Kerfoot & Pierson said that there was but one man in Chicago with whom this could be accomplished, and that man was Derby.

Negotiations were then entered into with Derby, which resulted in a written agreement to sell for the sum of $25,600 on the 6 March, and this agreement was left in the hands of Kerfoot & Pierson.

An abstract of titles was submitted for examination, which resulted in the execution of a deed by Walker, as executor, dated the 16 March, but which was not delivered until the 19 March, on which date Derby paid to Walker the cash payment. But Derby not deeming this deed satisfactory, it was required by him that a further deed should be furnished, executed by all the devisees under the will, to

which Walker assented; and until this additional deed should be delivered, it was agreed between the parties that Derby's notes for the deferred payment, and his deed of trust to secure the same, should be lodged in escrow with Kerfoot & Pierson, to be given up to Walker when he produced the deed.

As some of the parties lived abroad, some time was consumed in effecting this; but the matter was consummated by the delivery of Walker on 30 May of the desired deed, and the notes and the security were then handed to Walker by Kerfoot & Pierson.

The bills in this case were filed on information received from Chicago as to the agreement, and the chancery proceedings by Kerfoot & Pierson against Derby, and the payment by Derby to Kerfoot & Pierson of $28,000 in compromise of their claim to the ownership of one half of this property.

As these two documents constitute the turning point of this litigation, they are here recited for convenient reference:

AGREEMENT.

"In consideration of three hundred and seventy-five dollars, to me paid by Sam'l H. Kerfoot and J. F. *Pearson*, known as S. H. Kerfoot & Co., of the city of Chicago, I do hereby agree to sell and quit-claim to said Kerfoot & Co., at any time before the 1st day of September, A. D. 1867, said Kerfoot & Co. agreeing to purchase, one half of the property by me purchased of John I. Walker, executor of Arthur F. Hopkins, deceased. It is agreed that if the said Kerfoot & Co. shall pay to *me*, in cash, four thousand and one hundred dollars, and the further sum of eight thousand and seven hundred dollars, payable in one, two, and three years, in equal payments, bearing interest at six per cent. per annum, and secured by deed of trust. It is further agreed, that if the said Kerfoot & Co. should fail to comply with the conditions of this agreement, or fail to make payment before the first day of September, 1867, then this agreement to be void, and the three hundred and seventy-five dollars, so paid by said Kerfoot & Co., shall

be forfeited to *me*, and retained by me, as stipulated damages for the non-fulfillment of said Kerfoot & Co.'s part of this agreement.

"Dated Chicago, March 19, 1867.

"WM. M. DERBY. [SEAL.]
"S. H. KERFOOT. [SEAL.]
"J. F. PIERSON. [SEAL.]

"For value received I hereby transfer and assign to J. Ford Pierson all my right and title in and to the within document, and the premises therein described, and outhouse, and request William M. Derby to convey the premises to said Pierson.

"Witness my hand and seal this 17 day of August, 1867. SAML. H. KERFOOT. [L. S.]

"Recorded 31 August, A. D. 1867."

KERFOOT & PIERSON'S BILL IN CHANCERY.

This exhibit is at page 60.

This bill, after setting forth the purchase by Derby from Walker as "on or about the 16 March, 1867," thus proceeds:

"Afterwards, *to wit, on the* 16 *March*, 1867, the said William Derby *agreed* with your orators to sell to your orators one-half of the said property, which had been so purchased by the said Derby from said Walker, as such executor," &c.

It then avers:

"*The said agreement was made verbally, but on or about the* 19 *March*, 1867, said Derby undertook to *reduce the same to writing*, and the writing thereupon drawn by him was executed by said Derby and your orators, and is as follows:"

Here the agreement already cited is fully copied.

The bill then proceeds:

"Your orators, when the said memorandum was presented to them by said Derby, objected to the mention therein of $375, on the ground that the said sum was *not to be paid*. But the said Derby then and there, in consideration of certain services, which had before then been rendered by your orators for said Derby, waived the payment of said sum, allowing it to stand, as being receipted for in said memorandum, on condition that your orators, in pay-

ing the said sum of $4,100 before the 1 Sept., 1867, should pay interest on said sum of $4,100, to which condition your orators then and there gave their assent."

The bill then avers an offer to comply with the stipulations of the agreement on 17 August, 1867, and a demand for a conveyance. This offer was again made on the 19 of same month, and repealed on 31; but Derby, under several frivolous pretexts and excuses, refused all compliance with the agreement.

The prayer is, that Derby be required specifically to execute this agreement, and to convey one-half of the land purchased from Walker.

Appended as exhibit are copies of the three notes tendered to Derby by Kerfoot & Pierson; they are dated 17 August, but made to bear interest from *the* 19 *March*, 1867.

Appended to the bill is also an affidavit of *Pierson*, that "the agreement was made between Derby, of the one part, and S. H. Kerfoot and this affiant, of the second part, *dated* 19 *March*, 1867, by which Derby, for *valuable consideration paid*, and to be paid, agreed to sell and convey aforesaid." (69.)

No action was had in court on this bill, as a compromise was effected, by which Derby paid to Kerfoot & Pierson $28,000, taking their quit-claim deed for their half interest in the lands, in which the consideration is falsely stated at $1,000, when, in fact, they had received $28,000. This deed is executed by Kerfoot & Pierson and *their wives*. It bears date the 5 September, 1868, and conveys to Derby all their right and title to the land, "to wit," "the lands referred to in a certain agreement made between the said Kerfoot & Pierson and said Derby, dated 19 March, 1867, and recorded in book 4, p. 292." (See p. 9.)

The answer of Derby to Walker's bill was filed 26 April, 1869. It admits the title of complainants, as it is therein set forth, and of his offer "to purchase the said premises of and from the said John I. Walker, *and of and from the other owners thereof, and the parties interested therein*." (35.)

It states the agreement for the purchase to have been

made on the 6 March, 1867. Walker proposed, that if he would pay $8,200 in cash, and execute his notes for the deferred payment, together with a deed of trust to secure the same, and lodge them with Kerfoot & Co., to be held until he, the said Walker, "should procure and deliver to this defendant a quit-claim deed to said premises from all the others, owners thereof, that the said John I. Walker would then and there make and deliver to this defendant a good and sufficient deed for said premises, so far as it was possible for him to do so, and would also procure and deliver to this defendant, as soon as possible thereafter, a quit-claim deed to said premises from all the parties interested therein; and that, when he so procured and delivered such quit-claim deed, he should be entitled to receive the said notes and deed of trust. Which proposition this defendant then and there accepted. (36.)

Derby then gives this account of the agreement: "That *some considerable time* subsequently to the nineteenth day of March, 1867, and after this defendant had purchased and paid as aforesaid, and *during and before the time* when the said John I. Walker delivered the said quit-claim deed, executed by said other complainants to said defendant, he, this defendant, *in the interim between the date of said purchase* and the time aforesaid, having offered the said real estate for sale to divers persons and in divers ways, at the rate of $1,000 per acre, and being unable to effect a sale thereof at that price, stated to said Kerfoot that they, the said Kerfoot & Co., were instrumental in his purchasing the said real estate, and that the same *was not then worth the price the defendant had paid therefor*, and that this defendant had been endeavoring to make a sale thereof at the rate of $1,000 per acre, on credit, and was unable to make sale thereof or any part thereof at that price and upo· those terms; whereupon the said Kerfoot stated to this defendant, that they, K. & Co., would purchase one-half of premises at the rate, and upon the terms that this defendant purchased the same from Walker. And this defendant, *verily believing* that he had paid the full and extreme value of the prem-

ises, and also believing that the premises *were not then worth more* than this defendant had paid therefor, this defendant then stated to Kerfoot, that he would sell his firm one undivided half interest at the price and on the terms which he had purchased from Walker, *provided* that K. & Co. *would, in addition thereto, pay this defendant the sum of* $375, *an amount equal to one-half of the commission which K. & Co. ought to have received from Walker for assisting him in making sale of said premises*, to which Kerfoot then and there agreed.

Thereupon said Kerfoot, as this defendant believes, in *his own proper handwriting*, prepared the original of said agreement in the bill of complaint set out, and *ante-dated the same to March* 19, 1867, with a view to entitle this defendant to interest on the amount which this defendant had paid from the time of said payment, and not, as in said bill of complaint charged, secretly and corruptly or covertly, with a view to cover up or hide any misconduct on the part of K. & Co., or either of them, and this defendant, as unjustly alleged.

In the amended bill of 10 August, 1869, the 4 interrogatory calls upon defendants to answer "whether an agreement in writing was not made between said Derby and Kerfoot & Co., of the form, tenor, and effect set forth in the stating part of the bill, p. 55?"

It also annexes as an exhibit, a letter from Kerfoot to Walker, bearing date 29 February, 1868, which, at page 77, gives this version of the agreement: "A few days after you left, Derby came into my office, and (whether serious or not I do not know) began complaining of the bad trade which we had led him into. 'The land was half a damned slough,' &c. We asked him if he would sell us half at the price he paid. He said he would, if we would give him *half the commissions we had received.* We said *we would;* and *we at once drew a rough memorandum, which he could not refuse to sign.* We had time to make the cash payment until September 1. *We do not think that he dreamed we would take him up, but we did.*"

In the answer of Kerfoot & Pierson to this amended bill,

they admit the title as set forth, and that the notes of Derby, and deed of trust to secure the same, were deposited with them "*in escrow*, until he (Walker) should procure and deliver to Derby a further and confirmatory quit-claim deed from all the other owners thereof; that he, the said Walker, would then and there make and deliver to said Derby a good and sufficient deed for the premises, so far as it was possible for him to do so, and would also procure and deliver to said Derby, as soon as possible thereafter, the said confirmatory deed from all the other parties interested therein; and that WHEN he so procured and *delivered* the said quit-claim deed he should be entitled to receive from said Kerfoot & Co. the said notes, to which proposition the said Derby then and there assented." (99.)

The answer then gives this account of the agreement of the 19 March: "That *some considerable time subsequent* to the 19 March, after the defendant had purchased and paid for the land, and *during and before the time* when the said Walker delivered the said confirmatory deed to said Derby," upon the complaint of Derby that he could not sell the land at the price he had given for it, they agreed to purchase the one half interest, allowing Derby one half the commissions. "And, thereupon, the original of said agreement set out in the bill was made, *and ante-dated* to 19 March, 1867, as agreed between Kerfoot and Derby, *to entitle Derby to interest on the amount which he paid from the time of such payment.*" (102.)

The answer denies that the original was written by Derby, and avers, "that said Kerfoot prepared hastily and roughly the original paper, which *was then amended and rewritten by said Derby.* The words 'I' and 'me' refer to Derby, and the word 'Pearson' to J. Ford Pierson." (110.)

In reference to the bill in chancery by Kerfoot against Derby, to enforce the agreement, the answer says, "it was never completed, the matter in dispute between them having been adjusted before the said bill was revised, corrected, or filed by these defendants." (107.)

Derby's answer, in reference to the date of the agree-

ment, is a transcript of Kerfoot's; he says it "was a considerable time subsequent to 19 March," (119,) and that "it was during and before the time when Walker delivered the quit-claim deed." At page 120 he says, "therefore the said Samuel H. Kerfoot, *in his own proper handwriting*, prepared the original of the agreement set out in the bill, and ante-dated the same to the 19 March, with a view to have the said instrument bear the same date as that on which the defendant made the cash payment." At page 126, he states the original was written by Kerfoot, "and then and there amended in the handwriting of this defendant, as this defendant *now remembers*."

We have heretofore stated that K. & P. had received from Derby $28,000, for their interest in the property by way of compromise, though it is shown by the evidence that the property sold and unsold would have entitled them, under a just title, to a much greater sum. Their admission of the receipt of $28,000, for their deed of 5 September, 1868, which states the consideration at $1,000, will be found at page 111.

We have only to add to these various versions of the agreement the evidence of Mr. Pryor.

Mr. Pryor, of New York, was on a visit to Chicago in July, 1868, and then, for the first time, heard of the agreement, and that it had been placed on record. Surprised at this information, he visited the record office, and there read the instrument of the 19 March. He soon after this had a conversation with Derby, which is thus stated:

"How this conversation began I am not able to state; but he said there was such an instrument of record, but that it had never been signed by him. I then asked if he had never authorized it to be signed by any body else or sanctioned it. He said that he had never authorized it or sanctioned it; that it had been put on record by Mr. Pierson, without his knowledge, and without the knowledge and consent of Mr. Kerfoot, who, I think he said, was at that time absent abroad. That is about the amount, I think—the substance of the conversation. I asked him why these men did such a thing. He said, to cast a cloud

upon his title; and, in order to get rid of that, he would be compelled to pay something." (181.)

A large number of witnesses were examined as to the value of the land. As is usual on such a question, there is much difference of opinion. A careful comparison will, however, show that the weight of evidence is to the effect that the land was sold at a great sacrifice. In the view we shall present we do not deem this very material.

Upon the hearing of the case the court rendered a decree dismissing the bill at the costs of the complaint, from which decree the present appeal is prosecuted.

And it is now assigned for error that, on the pleadings and proofs, the decree should have been for the complainants, the sale set aside, and the relief prayed for granted.

The question of fact is, were Kerfoot & Pierson, who were employed to effect the sale, interested with Derby in the purchase?

The complainants, by their bill, fully inform the defendants of the grounds on which they base their allegation that they were so interested. They furnish full copies of the agreement and the bill in chancery, heretofore referred to.

If the averments in the chancery proceedings are true, there is an end to all controversy in the case. With the strongest motives to controvert the facts stated therein, or explain them away, what is the reply of Kerfoot & Pierson? Do they deny any one of the averments of that bill, which purports to relate to their agreement with Derby? Not one.

They refuse to put in issue any of these condemnatory facts, but limit themselves to this reply: "And these defendants, further answering, admit that said defendant, William M. Derby, did utterly refuse to comply with his said agreement, in writing, with these defendants, of date March 19, 1867; and that these defendants were compelled to and did cause to be prepared a bill of complaint, substantially as marked Exhibit A, annexed to said amended bill of complaint, but that said bill of complaint, as herein-

before stated, was never completed: the matter in dispute between these defendants and said Derby having been adjusted before the said bill was *revised, corrected, or filed* by these defendants." (107.)

The averment, therefore, by Kerfoot & Pierson, in the bill which they had prepared, that *they had agreed with Derby to purchase by a verbal agreement on the* 16 *March, which was reduced to writing by Derby, on the* 19 *March*, stands confessed as the statement of a fact!

That there had been a prior verbal agreement is evidenced by the further averment in Kerfoot & Pierson's bill, "that when the memorandum was presented by Derby, they objected to the mention therein of $375, on the ground *that the said sum was not to be paid.*" That is, by some previous verbal agreement, it was not to be paid.

The answers admit the agreement as set forth in the bill. But, to avoid the effect of its date, they set up: that the 19 March is not the true date; that, in fact, it was executed subsequently. But when, or under what circumstances, they carefully avoid stating. Instead of a positive statement, we have only the allegation that it was a "considerable time" thereafter. It is, however, admitted to be "*during and before the time* when the said John L. Walker delivered the said quit-claim deed."

The date of an instrument may not in all instances be conclusive on the parties executing it. But when the question of fraud turns upon that point, will parties be permitted to escape the charge of fraud, by swearing to another date? Here is an instrument placed upon the public records of the country, and constantly recognized by the parties to it, and only sought to be changed when the emergency of litigation makes it necessary to do so, to screen them from liability. If under such circumstances it could be permitted to alter the date, the court would at least require a rigorous showing of circumstances to establish the true date.

In Watts *v.* Grove it was declared by the lord chancellor to be extremely dangerous to permit an impeached deed

to be supported by evidence of considerations wholly different from those alleged in it. (2 Scho. & Lef., 553.)

But what is there in the record which entitles these parties to the confidence of the court?

We have, in the sworn answer of Kerfoot & Pierson, a solemn denial that "Kerfoot was the agent of said Arthur F. Hopkins, during his lifetime, *touching said property*, or had charge thereof as agent." (p. 104.)

Now, turning to the evidence, we find a power of attorney from Arthur F. Hopkins and J. W. Pryor, appointing James H. Rees and *Samuel H. Kerfoot*, them or *either of them*, to survey, subdivide, and plat these lands, and to sell in such quantities, for such prices, and on such terms, as may seem fit to either of them. This bears date the 2 June, 1855.

Under this power Kerfoot continued to be the agent until the 4 December, 1860, when it was revoked. (pp. 130, 131.)

Again, in their deed to Derby of 5 September, 1868, why was the true consideration suppressed and a falsehood substituted? It is shown that Derby paid them $7,200 in cash, and made a conveyance of a lot, which made the whole consideration $28,000. Why did they insert in the deed the sum of $1,000?

What explanation can be given of Derby's denial to Pryor, in July, 1868, of ever having signed the agreement or authorized any one to do so for him?

Again, why were all these transactions studiously concealed from Walker? And what mean the contradictory statements and tergiversations as to the date of the agreement, the half commissions, and the party who drew it up?

Let us see. At a time when no controversy with Walker was anticipated, then Kerfoot & Pierson's statements were, that a verbal agreement with Derby was made on the 16 March, and on the 19 "Derby undertook to reduce the same to writing; and the writing thereupon drawn by him was executed by said Derby and your orators." (61.)

Now, in Kerfoot's explanatory letter to Walker, dated 29 February, 1868, *postmarked* 14 *March*, (142,) he narrates how Derby came to the office, damning and complaining about his purchase. He says:

"We asked him if he would sell. We said we would, and *we at once drew a rough memorandum*, which he could not refuse to sign. We do not think he dreamed we would take him up, but we did." (77.)

Then, we have still another version of the story in their answer, which explicitly denies that the original was written by Derby, but avers, "that the said Kerfoot prepared, hastily and roughly, the original paper, which was then *amended* and *rewritten* by *said Derby*." (110.)

In the first account we have the haste in which Kerfoot & Pierson accepted the offer of Derby, and the hasty writing of the original by them on Derby's own terms. Now, it seems that Derby was not satisfied with the agreement written by them, but himself drew up an *amended* agreement. What was this amendment?

In speculating as to the authorship, the agreement bears internal evidence that the first statement by Kerfoot & Pierson, that "Derby undertook to reduce the same to writing," is the truth. Kerfoot is shown by his correspondence to be an accomplished business man. The agreement is bunglingly drawn. The words "I" and "we" are admitted to refer to Derby. The name of Pierson is misspelt '*Pearson*."

But why is not this paper produced by the parties? They do not allege that it is destroyed. Its production would at least show by whom it was in fact drawn.

COMMISSIONS.

The importance of the fact as to the division of the commissions, as must be anticipated, rests on the consideration that a demand by Derby for the one-half very strongly supports the theory that the speculation was a joint one, in which all that was made by either party was to be considered a portion of the spoils.

How Derby should insist on his share of the commissions, as an *additional consideration* for his sale to Kerfoot & Pierson of property which he so loudly complained of, and which, after the most vigorous efforts, he declares he was unable to sell at his purchase price, it is difficult to comprehend, if this account was entitled to credence.

But let us see how the statements on this head tally with each other.

In the first of them Kerfoot & Pierson say that, when the agreement was presented by Derby, *they objected to the* $375, as this sum was not to be paid. Notwithstanding this denial of indebtedness, it was allowed to stand as receipted for, Derby waiving the payment, in consideration of certain services which Kerfoot & Pierson had theretofore rendered to him, and on the further consideration that interest should be paid on the $4,100, to which they gave their assent.

In the letter to Walker, already referred to, we have this version: "We asked him if he would sell at the price he paid? He said he would, if we would give him half the commissions we had received. We said we would; and we at once drew up the memorandum. He did not dream we would take him up; but we did." (77.)

It is impossible to reconcile these statements and the one made in the answer with each other.

THE CHANGE OF DATE.

It is not pretended that the agreement was by *accident* erroneously dated; on the contrary, it is said to have been ante-dated by *design*. It was thus necessary to assign a *motive*, which is thus stated: "With a view to entitle Derby, the defendant, to interest on the amount which he had paid from the time of said payment."

Is this a valid or even a plausible explanation? Assuming the 19 March to be the true date, what difficulty was there in designating any time from which interest was to run? Surely, with business men, this must have been known as the universal practice in business transactions.

Look at the notes tendered by Kerfoot & Pierson to Derby, to enforce Derby's compliance with the agreement. They are all dated the 17 August, 1867, and made to draw interest from 19th March. To show the bearing interest time, there was no necessity to ante-date these. (p. 66.)

But, still further to show the falsity of this pretext, we again call attention to the terms of this agreement. Derby agreed to sell, and the time given to Kerfoot & Pierson in which to purchase was "*any time before the* 1 *September*, 1867." The payment was then to be $4,100 cash, and $8,700 in equal payments of one, two, and three years, with interest at six per cent. *There was no interest to be paid on the* $4,100. In case of the non-purchase, it was stipulated that Kerfoot & Pierson should forfeit the $375, as stipulated damages.

As the agreement on its face shows that no interest was to be paid on the cash payment, and the notes for deferred payment would only draw interest from the time when Kerfoot & Pierson, before 1 September, consummated the purchase, it is evident the date of the agreement could possibly have no relation to the question of interest.

The agreement about interest is not in the written instrument; but, if the parties speak the truth, is outside of it.

Kerfoot & Pierson objected to the payment of the $375, as presented in the agreement; but it was agreed to let the writing stand, Derby waiving the payment, on condition that if the $4,100 was paid before the 1 September, interest should be paid.

It is therefore clear, that the only stipulation as to interest accruing from the date of Derby's purchase is not in any manner shown by this written agreement, but rests solely on an outside verbal agreement between the parties. The reason assigned for ante-dating the written agreement to the 19 March is thus shown to be false.

If a party charged with a crime sets up as his defence an *alibi*, it is fatal to him if this is proved to be false. Here,

the reason assigned for giving a false date is shown to be untrue; and this increases the probability of the fraud charged.

We submit that the evidence establishes these facts:

1st. That on the 3 March, 1867, an agreement as to the terms of the purchase was entered into.

2d. That the deed of Walker was delivered on the 19 March, when the cash payment was made.

3d. That another deed, signed by the other parties claiming under Hopkins's will, having been required by Derby, it was agreed that, till this could be procured, Derby's notes for the deferred payments, and his mortgage to secure the same, should be placed in escrow in the hands of Kerfoot & Peirson until this second deed was delivered; and that this was done on the 30 May, 1867, when the notes and mortgage were handed over to Walker.

4th. That the agreement between Kerfoot & Pierson and Derby, by which they were to divide the commissions and become interested in the purchase, was made verbally on 16 March, and on the 19 reduced to writing.

The principles of law which govern such a case are of easy application.

The law which governs the conduct of a trustee is equally applicable to all cases in which a confidential relationship exists. An agent employed to make a sale is fully within this category.

It is not necessary, to entitle the *cestui que trust* to relief, even to show that the trustee had made some advantage by the purchase. That would not be putting the doctrine on its true ground, which is, that the prohibition arises from the *relationship of the parties.* The principle applies, however innocent the purchase may be in a given case. It is poisonous in its consequences.

In all cases, therefore, where a purchase has been made by a trustee of the estate of his *cestui que trust*, although sold at public auction, it is in the option of the latter to set aside the sale, whether *bona fide* made or not.

Story's Eq. Jur., § 322.

Willard's Eq. Jur., p. 187.

In Bailey *vs.* Watkins, 6 Bligh, N. S., 275, n., was a purchase at auction, for a *large price*, of certain iron works, the purchase money was paid into court, the title delivered, possession taken, and the parties were carrying on the works.

By Lord Eldon's decree, the sale was set aside. This was affirmed in the House of Lords, on the ground that *one* of the trustees for the sale, who had been consulted as to the terms, had previously to the sale become interested in it.

This principle of law is nowhere more rigorously applied than by the decisions of this court. In Michoud *vs.* Girod, 4 How., 553, it is held, that such purchases are fraudulent and void, without any inquiry whether they were made by the intervention of other parties, or whether the sales were made with or without the sanction of judicial authority. The rule applies not only to trustees, but to agents and all others *qui negotia aliena gerunt.*

The general rule stands upon our great moral obligation to refrain from placing ourselves in relations which ordinarily excite a conflict between self-interest and integrity. It restrains all agents, public and private; but the value of the prohibition is most felt, and its application is more frequent, in the private relations in which the vendor and purchaser may stand towards each other. The disability to purchase is a consequence of that relation, which imposes on the one a duty to protect the interests of the other, from the faithful discharge of which duty his own personal interests may withdraw him. In this conflict of interest the law wisely interposes. *It acts, not on the possibility that in some cases the sense of that duty may prevail over the motives of self-interest; but it provides against the probability in many cases, and the danger in all cases, that the dictates of self-interest will exercise a predominant influence and supersede that of duty.*

In Terwilliger *v.* Brown, (59 Barb., 9,) the property was sold by the executor to pay debts, under the order of the surrogate. B., the auctioneer, struck off the property to himself; the sale was confirmed, and deed delivered to B.

But before the confirmation, B. had made an arrangement with the executors, by which he was to be interested. The sale was set aside, on the ground that, previous to the confirmation, B. was not such an owner of the premises as to make a valid sale thereof. (14.)

See same case, 44 N. Y., 240.

And so it is held, that where the previous employment disqualifies a party from purchasing, such disqualification continues as long as the reasons upon which it is founded continue to operate.

Carter *v.* Palmer, 8 Cl. & Fin., 705.

See also Charter *v.* Trevilyan, 11 Cl. & Fin., 714.

So, where the purchase is by an agent, or he becomes interested in it immediately afterwards, and before the payment of the purchase money, the sale will be set aside.

Rosenberg's Appeal, 26 Penn. St., 67.

The purchase money in the case now before the court was not paid over to Walker until the delivery to him of the notes of Derby on 30 May, when he delivered the required deed. Until this period, Walker had no right to possess the notes given for the purchase money, or the mortgage intended to secure them, deposited in escrow.

Clark *v.* Gifford, 10 Wend., 311.

THE ONUS PROBANDI.

The bill sets out the agreement, of which the date is a part. The answer admits its execution; but avers that the date which was designedly used is not the true date of the transaction, but that, in fact, it was *executed at a subsequent time.* The burden of proof is on the defendant.

Again, whenever there is a presumption that a fact exists, he who makes an allegation to the contrary must prove it. Written instruments are presumed to have been made when they bear date. An allegation of another date must be proved.

Higdon *v.* Higdon, 6 J. J. Marsh., 51.

We deduce evidence from an answer in the same way and under the same rules that we receive proof of the confessions of a party. Although that is subject to many suspicions, to which admissions in an answer are not liable, still we give that which makes against a party its full force; and if that which is in his favor be unreasonable in itself, or inconsistent with the facts of the case, we reject it altogether.

Brown *v.* Brown, 10 Yerg., 91.

The chancellor is the substitute of a jury, and, like the jury, is bound to decide according to the weight of the evidence, whether that evidence is given by witnesses or is to be derived from circumstances proved.

Circumstances alone may be of sufficient strength to produce conviction of the truth of the allegations, and overrule the denial, under oath, of the defendant, as to a matter within his personal knowledge.

Clark *v.* Vanreimsdyk, 9 Cr., 160.

Long *v.* White, 5 J. J. Marsh., 228.

Our position is, that the chancellor is restricted by no arbitrary rule, applicable to all cases; but in each case must decide according to the preponderance of all the legal evidence which it presents.

It is true that the defendant is entitled to the benefit of his answer when responsive to the bill. This is admissible as evidence for him, and therefore the chancellor is bound to receive it. Its *admissibility* is one thing, but its *credibility* is quite another thing. It may contain within itself its own refutation, and it is for the chancellor to decide whether its statements are of such a character as makes out a case to bar the relief prayed for.

Dunham *v.* Gales, 1 Hoff. C. P., 191.

And so a mere denial of an allegation of the want of consideration, unaccompanied by evidence which the de-

fendants could have produced, if in truth it had been paid, will not be sufficient to prevent a decree.

In Callan *et al. v.* Stratham, this court said: "No proof was given by defendants, in respect to the payment of the consideration, with a view of sustaining their answer. They rely entirely upon the rule of pleading, that their answers are responsive to the bill, and to be taken as true, till overthrown by proof on the other side. As they aver the payment was a transaction between themselves, the evidence in respect to which is therefore exclusively within their own knowledge, it would have been more satisfactory if they had given some proof in support of their answers."

And again, say the court: "There are other facts in the case which justify the decree below; the most important, perhaps, the unsatisfactory evidence, on the part of the Callans, in respect to the payment of the consideration mentioned in the deed. This proof was vital, in order to uphold a deed in other respects surrounded with suspicion. The evidence was in their possession. The want of it, under the circumstances, is nearly, if not quite, fatal to the validity of the deed as against creditors."

23 How., 479, 480.

It is to be noted that the answers expressly stated that the consideration was paid, its amount, and the circumstances which attended it. The answers were directly responsive to the bill—and no witness was introduced by complainant to disprove the payment—yet there was a decree for the relief prayed.

That circumstances alone may be sufficient to maintain a bill for relief is made manifest, when we consider the rule of evidence as applied to cases of fraud, the parties to which are generally the only witnesses conusant of it.

This principle is well stated by Chief Justice Whitman, in the case of Gould *v.* Williamson.

"We are satisfied," says he, "upon a careful review of the evidence, with the truth of the allegations of the plaint-

iff. The defendant has denied all the fraud with which he is charged.

"It is said, and truly, that, to control the answer, the evidence against it must be equivalent to that of two credible witnesses.

"This evidence, however, may in this, as in many other cases, be by way of *inference from circumstances*, which are sometimes more convincing than direct testimony.

"In the development of fraud, it furnishes almost the only source to be relied upon. It is not often the case that any but the participants in the fraud are conusant of it; and *the perpetrators of it will deny it.*

"*If fraud, therefore, could not be established by circumstantial evidence, even in opposition to the denial of the defendant in equity under oath, the remedy in equity would, in almost every case, be illusory.*"

21 Maine, 276.

The decisions cited seem to be sufficient to control this case. It would be useless to multiply them.

Of course, when parties combine for a fraudulent or illegal purpose, they adopt all means necessary to prevent the unraveling of the fraud. If any one fact we have presented is not strong enough to show the fraud, the facts combined surely are.

Circumstantial evidence (says Mr. Wills) may be compared to a rope, made up of many slender filaments twisted together. The rope has sufficient strength to bear the stress laid upon it, though no one of the filaments would be sufficient for that purpose.

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